
BUENOS AIRES – GAC Morning Sessions
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ICANN – Buenos Aires, Argentina

CHAIR SCHNEIDER: ...Members of the GAC would want to raise with you.

So let me give the floor to Steve.

STEVE CROCKER: Thank you, Thomas. Thank you, everybody. Welcome, on behalf of the Board. I'm not going to say anything more because we're going to use the time to jump right into substantive things. Let's just do it.

CHAIR SCHNEIDER: So in that case, let's start with the first point, which is community priority applications. I would like to give the floor to Mark from the U.K.

Thank you.

UNITED KINGDOM: Thank you, Thomas. And good morning, everybody, and welcome to the Board and to chief executive, Fadi. Very grateful for your joining us at this early hour today, and appreciate very much the opportunity to raise a number of issues.

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And I one I want to kick off with today is Community Priority Evaluation and process relating to that, the CPE process.

The GAC continues to keep performance of the CPE process under review, as a matter of serious concern. We're aware of a number of situations where the process does not seem to have rolled out in a way that's met the expectations of applicants.

So this does continue to be an issue we will keep under review. And you will recall that in Los Angeles, the GAC expressed concern about the consistency of the CPE process following the rejection of a number of applicants, and we specifically requested the Board, as a matter of urgency, examine the feasibility of implementing an appeal mechanism. Chair's reply, Steve's reply in a letter of 28 April said that, as I summarize it, in view of actions already undertaken by applicants, this would not be feasible option to pursue.

We'd be grateful for your comments as to whether this is still the Board's position, if you've had any further consideration of this.

As you and we have noted, the ombudsman is undertaking an investigation, and we look forward to receiving his report, which I think we expect sometime in July, a preliminary report.

And my second question, in addition to any further consideration with regard to our suggestion for an appeal mechanism, my second question is what would the Board's process be when that report does issue and how we would continue to engage on this issue in view of the concerns of many in the community about the process currently.

And as we look forward to the new application round which we expect two to three years' time, I expect we would all have the ambition that lessons learned from the current round would be fully taken into account in designing the future version of the Community Priority Evaluation process.

Thank you very much.

STEVE CROCKER:

Thank you very much. I'm going to turn the floor over to Chérine in just a second. But to your last point about taking lessons learned, I'm anticipating that the studies of lessons learned from this round will be approximately the same size as the current Applicant Guidebook and there is a chapter with your name on it for writing up this particular issue.

I'm given to understand, and Chérine will have more data on this, it's important to distinguish between those cases where there is a single applicant who gets priority evaluation versus multiple applicants who pass priority evaluations, so those wind up in kind of different states.

Chérine.

CHÉRINE CHALABY:

Thank you, Mark, for your comments.

Bruce? Okay. And Bruce will speak after that as well.

You use the language of rejection of applications; right? And it isn't, to my knowledge, that there is rejection of a particular application, per se. There are applicants who are competing together, and the CPE just -- well, it has the duty to look at these various application and give, perhaps, special treatment of one over another.

Not everybody is happy with the result in all occasions, but I understand your concerns.

I think as far as this round is concerned, there is not much we can do, and we'll have to think of anything about any lessons or anything new in the next round. But at the moment, I don't see -- you know, if there are specific cases that you can point at, we can discuss.

Bruce?

BRUCE TONKIN:

Thanks, Cherine. Yeah, just to reinforce that the community priority application process is only used in instances where there's multiple applications that have passed evaluation. So in these cases, there has been no rejection. In fact, there are multiple applications that have passed the evaluation process for that particular string.

And this process was really developed to look at special circumstances where there is one clear applicant that represents the entire community. And that's a difficult bar to achieve.

The outcome is there will be the string delegated, and it will be available to the people that use that particular string.

Mark commented about the process going forward. The whole new gTLD program will be evaluated, and absolutely the GNSO has the ability to adjust that process and see if we can improve the process for community evaluation for the next round.

CHAIR SCHNEIDER: Yes, U.K., please.

UNITED KINGDOM: Thank you, yes. Thank you very much for those comments.

With regard to the ombudsman, did you -- did you -- do you have some expectation of how the ombudsman's report will be handled by the NGPC and the Board?

Thank you.

CHERINE CHALABY: Chris.

CHRIS DISSPAIN: Thanks, Cherine.

It's an ombudsman's own motion matter, and he's going to provide a report. And it's almost impossible to answer your question until we see the report.

His report might say, "Everything is fine." His report might say, "There is a problem," but I can't -- we can't say what we're going to do until

we know what we're being -- what he says and what we're being asked to do.

Thanks.

CHAIR SCHNEIDER: Olga, please go ahead.

OLGA CAVALLI: Thank you. Thank you, Chair.

Just one brief comment, that ICANN should have in mind that the applicants competing for one string, some of them from communities and other are other types of companies, are extremely asymmetric. And as a message for the whole community, it could be good that ICANN has in mind the public interest. So these community applications be considered in such way.

Thank you.

CHAIR SCHNEIDER: Further comments on this issue?

I would -- Maybe to end this, I would state that what I note is that the assessment, let's say, from the Board compared to the assessment that we've heard yesterday from the community applicants themselves is fairly different. So there may be some needs to actually increase this discussion on this.

Thank you.

The next agenda item is the request for an update on .AFRICA.

Maybe African Union Commission, you want to introduce this.

AFRICAN UNION COMMISSION: Thank you, Thomas. Maybe if we could get some update from the Board before I convey the message of the African Union Commission to the Board itself and to the GAC.

Is there any way to have any update on that, please?

Thank you.

CHERINE CHALABY:

This is in relation to .AFRICA. As you know, there is an IRP process going through. I was a witness at this IRP process. It took place, I think, in May, about a month ago, and we're just expecting the result and deliberation of the IRP panel. It could be in a month or two. I don't really know. It's in their hand.

But as far as the proceedings, it's done and they are now just considering their decision.

Thank you.

CHAIR SCHNEIDER:

Thank you.

African Union Commission.

AFRICAN UNION COMMISSION: Thank you, Thomas.

I will speak in French, and perhaps this is easier for me. So I will give you some time to put your head sets.

Thank you very much.

Mr. Chairman of the ICANN Board, members of the ICANN Board, it's always a pleasure for me to meet you. It's enriching, in fact.

Today, I will save you some time and I will not go into the history of this project that is vital for Africa, but I will take advantage of this opportunity to thank all of you who had contributed to this process and to move forward.

I would particularly like to thank the members and colleagues of GAC, because they have unanimously supported this process. And based on their decision, now we have a contract signed between ICANN and the operator appointed by the commission of the African Union. This is very important contribution.

More than one year ago, we have signed an agreement between our operator and ICANN. This agreement has not been put in practice yet.

As affected parties, we are internally -- in an internal process that was brought by a third party, but unfortunately, as an affected party, we cannot influence in this process as we should.

A report has been prepared by a panel, and I hope this report will be published soon. We depend on this report.

Now we cannot do anything. This is an unfortunate situation for us because we believe this process to delegate this domain name should not be stopped based on a recommendation made by an auditing panel. But the procedure and processes are what they are, and so we must wait. There's no way out.

So I want to point out that Africa is remaining silent, but it's not subdued.

So we count on you and all the members here so as to settle this issue in a friendly fashion.

There are some blogs that have compared ICANN and ICANN's authorities with other organizations that are in decay. These blogs wanted to make ICANN unstable, to harm our whole organization, and this might have influenced our relationships. We certainly do not take this into account, because this is an evil game.

In September there will be a meeting of African ministers. They analyze the point of .AFRICA. Then the discussions will go to head of states next year. And I really hope that we should not be put in a position to make decisions that will be not good for anybody. I hope that the decisions we make will be for the benefit of everybody.

So I really call to your professionalism and call upon your knowledge because Africa, ICANN, and the whole world are facing difficult

challenges in terms of the IANA transition, Internet governance, cybersecurity.

And so our relations should not be affected because of this stuff. We know that one day we will settle this issue. And if this is not done today, it will mean a failure in terms of diplomacy. And this will certainly not be a benefit for us all.

So this is the message I wanted to convey from Africa, from the African Union Commission. And I certainly hope for a decision to be made in the short term. We have been patient, but, you know, we have our own limits.

Thank you.

CHERINE CHALABY: I would like to thank for your message.

CHAIR SCHNEIDER: If that is not the case, then let's move on to the next item, which is new gTLD safeguards.

As you know, there is a rather long story to this, so let me give the floor to the European Union Commission to introduce the item.

Thank you.

EUROPEAN COMMISSION: Thank you very much, Mr. Chair, and thank you to the Board for coming to speak to us today.

I'm not going to give you the whole long history. We don't have time, obviously. But I just wanted to recall again in this context that, as you know very well, and the African Union has mentioned this as well, that over the last years, the role of ICANN and the nature of ICANN has been more and more under public scrutiny for a whole series of reasons. Not only from the wider Internet community but from political interests and international media. This is in part, of course, because of the IANA transition over the last year, but I think also because of the growing importance of the Internet to our digital economies and our economies in general, and also to our society. So it's quite normal that the attention is drawn closer and closer to what goes on in ICANN and its activities.

So for this reason, we think that it's even more important than ever for ICANN to be seen to apply its policies in an environment that holds the public interest at the very highest level, and to ensure that reliance and trust in the Internet is underpinned by its activities.

Consumers and, indeed, all users of the Internet will want reassurance that ICANN is carrying out its work with their interests in mind and taking into consideration aspects that assuage public-policy concerns. And I know that you're very attentive to this and sensitive to this, particularly since we've seen two recent letters from Dr. Crocker just in the last couple of weeks on this issue.

At the same time, we think that ICANN should not only take into account more actively the GAC advice on the new gTLD safeguards on highly regulated and sensitive strings but also to be seen to be doing so. Any harm to consumer confidence during this particular period, but also in the future, could potentially create further lack of confidence not just in the new gTLD process but also in ICANN, its policy development and eCommerce in general. Of course ICANN is not the whole Internet, but it has an important role in this.

With respect to protection of rights on the Internet, the Trademark Clearinghouse is a particularly positive example that addresses the issues related to protection of intellectual property rights, and so we think that the ICANN Board can be commended for having required that such protection be included in the registry agreements. But we think it would be a missed opportunity for ICANN to be perceived now as having taken action to protect intellectual property rights owners but not in ensuring greater consistency and coherence in the protection of consumers.

And in the particularly highly regulated industries and sensitive sectors, such as those related to banks, insurance industries, pharmacies, medical support and others, it's all the more important that adequate protection of consumers be ensured by at least a requirement to verify the credentials of owners for those sensitive domains before they enter into transactions with the public around the world.

There are some very good examples of very positive cases where the registry operators have done this, and we think that by working together with all the communities interested and concerned about these issues, we can find some good practice that -- good practices that could be proposed to other sensitive areas.

So we're very concerned about this, and we want to encourage all the interested parties to work together to make sure that we make not just ICANN but the Internet an even be more responsible and trusted place for eCommerce and consumers in the whole world.

Thank you very much for your time.

CHAIR SCHNEIDER: Thank you.

Does the Board want to react?

STEVE CROCKER: I'm not sure it calls for a response.

CHAIR SCHNEIDER: Or other questions or comments on the issue, this issue?

STEVE CROCKER: Thank you very much, European Commission. I think we all care quite a bit about public interest and a positive environment for consumers, a safe environment, one with good -- can trust. It's challenging to

know the best path all the time, so that becomes a sort of constant dialogue along the way. And appreciate your concern.

CHAIR SCHNEIDER: Further questions or comments on this issue?

Indonesia.

INDONESIA: Thank you. I just want to reiterate what our colleagues have mentioned, that we want this in that trusted place for all of us, including especially for eCommerce.

Now, in countries like Indonesia, there are so many, so many crimes based on eCommerce using all gTLD around the world, and saying that as if they're selling Indonesian product with Indonesian account and so on and so on.

I think if we cannot say that a particular -- all gTLDs are trusted place, then we do not want that eCommerce using those gTLDs, will be declining, while today we know that eCommerce is perhaps the most developing business around the world.

Thank you very much.

CHAIR SCHNEIDER: Thank you.

Fadi.

FADI CHEHADE:

Thank you. Thank you, Mr. Chairman.

So to our colleagues from Europe and Indonesia, I thank you very much for raising the importance of the safeguards. You can rest assured, as our chairman just said, that we share with you the same concerns for the public interest and for the protection and safeguards to consumers.

I want to just, however, be very clear that sometimes ICANN's role is confused with the role of a global regulator. We are not a regulator. We are not the content police for the world.

ICANN's remit is limited to its contractual responsibility with the registries and registrars. If it's not in the contract, we cannot do anything. Maybe some day we will, but today we can't. We don't have a flag. We don't have any regulation powers. We don't have any powers to impose anything outside the contract.

So let's just be completely clear that when it comes to the full power of protecting consumers, we play a role with you, we partner with you, we provide information where necessary as our contracts require our registries and registrars. But we cannot do more than that. Our role stops there.

So this is a partnership. This means you have to do your part. We do our part. But we are not the ones that can be expected, either at a government's request or, frankly, at a private sector's request, to shut

down sites and to proceed with being the global Internet police. It is not our role.

But we will manage our contracts and our Compliance Team will make sure that if anything in the contract requires our registries and registrars to comply with the laws, with the regulations that many of your governments set, we will make sure they follow that. that is our responsibility.

CHAIR SCHNEIDER: Germany.

GERMANY: Yes, thank you, and good morning, everybody. And thank you for the explanation I think it's quite valuable. Just a remark. I think we, as the GAC, in particular we as Germany, have some concerns in respect of the contracts that have to integrate some of our -- or should integrate our safeguard from Beijing, and this is something that needs to be in the contract from our perspective.

And insofar as they would become part of your commercial relationship and then could be overseen by ICANN. And, frankly, we expect ICANN to oversee the contract and follow them.

And if there is part -- parts of the contract that are not followed, it is on ICANN to check this and -- in case, even go to some kind of litigation.

Thank you.

CHAIR SCHNEIDER: Thank you very much.

I have the European Commission.

EUROPEAN COMMISSION: Yes. Thank you very much.

Not to belabor the point, but there was never any intention to change ICANN into the global Internet police, of course. We would never suggest that.

I just wanted to underline what Germany has just said. As I said earlier, there are some very good practices. I just use the case of .BANK, for example. And what we want to see is that everyone works together to try to elaborate and extend these good practices to other cases in the highly sensitive and regulated sectors so that we have even better use in the ICANN context of these cases.

Thank you.

CHAIR SCHNEIDER: Thank you.

Cherine, please.

CHERINE CHALABY: Yes. And to follow up on that, since Singapore and in Singapore, we had a meeting where we gathered together the GAC, the ALAC, and

other members of the community, the registries and registrars, to talk about these PICs and safeguards and the enforcement. And ICANN is now pursuing an important idea, which is -- from a compliance point of view, is that -- and I'm going to read it for you here -- ICANN compliance commits to acknowledge complaints submitted by governments and consumer protection agency within two business days. ICANN further commits that complaints that appear to be well-founded will be handled expediently, regardless of the source of the complaint, and also commits to expedite processing of complaints based on factors such as the severity of the alleged breach and the harm that may result.

So that is something that ICANN compliance will do.

We looked at proactive monitoring and -- but decided that, collectively, this is not going to be pursued, for two reasons. One is, such monitoring would be difficult and expensive to implement and is unlikely to generate reliable data from which meaningful conclusion can be drawn.

And the second reason is, such monitoring will almost inevitably, and I'm taking to Fadi's point of view, draw ICANN into making a judgment about Web site content.

But in terms of responding to complaints, we will do this very expediently.

Thank you. And a fast track for governments' complaints.

CHAIR SCHNEIDER:

Thank you.

Bruce.

Okay. Further questions or comments on this issue?

Yes, Iran.

IRAN:

Good morning, everybody.

I think some deficiency in the process and complexity of the process and prevailing circumstances should in no way be translated into lack of competence to ICANN.

Thank you.

CHAIR SCHNEIDER:

Thank you.

Further comments? Questions?

Yes. Bruce.

BRUCE TONKIN:

Yeah, just an observation, I guess, particularly using the .BANK example. I think -- I did a quick sort of search online, and I found one domain name using .BANK that's a live Web site. But also doing a simple search, I found, you know, at least several hundred thousand domain names that include the word "bank" in their domain name, spread across the existing gTLDs and existing ccTLDs. So I think when

we're looking at these consumer protections, I don't think it's just about what's the name after the dot, but it's about domain names more generally, I want to think, because we have many domain names that use the form whatever the brand name of the bank is, followed by the word "bank," followed by either dot com or followed by the country code. That's where the majority of the banking Web sites are today in the hundreds of thousands.

So let's make sure we focus on the bigger problem, which is probably the existing names that use "bank" in their domain name.

CHAIR SCHNEIDER:

Thank you.

Other comments, questions?

If this is not the case, then I think we can move on to the next item, which is country and territory names at the second level.

Spain.

SPAIN:

Thank you.

As you may remember, in our last meeting in Singapore, we pledged to develop a database with the intentions governments have as regards the use of the country and territory names in the second level under the new gTLDs.

We have been working on developing such database. And we are collecting the views from countries. They are filling in the spaces in the table. And by the end of the month of July, I think we will be ready to have a complete list and forward it to ICANN staff or whatever you indicate us it's most suitable to do with it.

Thank you.

CHAIR SCHNEIDER:

Thank you. So this is a piece of information to share with you, that the GAC is working on a simple mechanism that is trying to help the registries and others to have an efficient approach to what's the use of country and territory names on second level. And as soon as the list is -- there may be a rolling list that will change over time. But as soon as the first version of the list is terminated in a few weeks' time, then we will send it to you.

Any questions or comments on this?

STEVE CROCKER:

Let me ask Cyrus Namazi from our staff to comment.

CYRUS NAMAZI:

Yes. Thank you. Good morning, everyone, and thank you for the update on the completion of the list that I think you mentioned in your communique in Singapore. We're looking forward to receiving it.

I just wanted to also give you a quick update in regards to something related to the country and territory names, and that's the release of two characters, for which we have actually put in a process which was updated based on input and advice from the GAC.

We're further updating that process, which we will be unrolling after Buenos Aires, to address some of the objections that we have received from the relevant governments and to ensure that work is being done to address any remaining open issues in terms of objections of the governments, of which we've had about 45 or so. Just wanted to let you know that we're also working on that in parallel.

Thank you.

CHAIR SCHNEIDER:

Thank you very much for this information.

If there are no questions or comments on this, then let's move on to the next bit, which is about the new gTLD program reviews.

We understand that you've had some sessions where this was discussed and some information was given that, unfortunately, due to our own schedule, was not possible for us to attend.

Basically, the idea of this is to get a sense from the board on how it plans to undertake the assessment and reviews of the first round of new gTLDs and to try and give us some information on where and how the GAC can feed in, give input into these review processes, as there are -- as we've heard now, but also on previous occasions, there are a

number of issues where there are some concerns about how things went or what results some processes delivered. So we would be very interested in getting some outline on when and how can we contribute to the ongoing or to these review processes that will start soon.

Thank you very much.

CHERINE CHALABY:

I think, Akram, do you want to handle this, please? Just give an update where all these reviews are and how input is going to be taken into account?

AKRAM ATTALLAH:

Thank you.

So the review process is multifaceted. There are the AoC review requirements, and then there are our own operational review of the implementation of the first round -- of the current round.

So this process is going to take some time to be implemented.

We just did a survey on the awareness of the new gTLDs and also on the competition, and we did a -- started an economic study. These are elements that are done for the first time this year. They will be done again a year from now to review the difference and the change. That will feed also into the AoC review. So there are a lot of work going on. And there is a session here that took place yesterday that covered all of the progress. And we have the time line or the estimated time line

online for anybody that wants to see the progress. And, hopefully, we will get a lot of this work done before any deliberation on what needs to be improved and how to start.

Thank you.

CHAIR SCHNEIDER:

Thank you very much.

Comments and questions on this issue?

Yes, Iran.

IRAN:

Thank you. This issue was discussed in previous GAC meeting, and there was strong support that any experience that we have gained to the applications or implementation of the first round need to be carefully examined and used for the second round. This is very important.

I will raise this issue in the CCWG from a different aspect and context, something which has not been properly designed and studied. If you put it in implementation with rush, you will have difficulty. So we have to take care of all of the problems, difficulties, deficiencies arising from the first round and use it for the second round, and not to rush to implement -- to start the second round. Otherwise, you will be faced with if not identical, but with similar problems and difficulties. That is an important element that needs to be taken into account before starting the second round.

Thank you.

CHAIR SCHNEIDER: Thank you, Iran.

Other comments?

AKRAM ATTALLAH: Thank you very much for your comments. The community is aware of the -- of this. And I think that we will continue working forward on our reviews, and we will take all of the review results into consideration as we develop the next -- next round.

Thank you.

CHAIR SCHNEIDER: Thank you. United Kingdom.

UNITED KINGDOM: Thank you. And thank you, Akram, for that update.

A key issue which we've raised in the committee has been the lack of geographical spread and diversity, the lack of awareness of the opportunity and maybe barriers or challenges for stakeholders in communities in developing countries and small island states. And I just want to reiterate that. It's an issue that we are actively concerned about in the Commonwealth community, where I'm working with member states of the Commonwealth on Internet issues.

So I want to take this opportunity to underline that, and that it's a key feature of the review to address that widely regarded deficiency in the current round.

Thank you, Chair.

CHAIR SCHNEIDER:

Thank you, U.K.

Further comments?

If that is not the case, then we have a few minutes left for an exchange on two other important elements, which one is the IANA stewardship transition. I have Norway, who will start the discussion. Thank you.

NORWAY:

Thank you, and good morning.

I will just give you a brief overview of where we are with the CWG response from the GAC.

We have participated in the CWG as a charter organization, and we have had substantial, then, comments made from governments also in the public comment period of the CWG.

These are comments that have been very useful in the CWG work for the members and the participants in this group from the GAC side. I think it's in total, around 12 participants and members we had. And also comments that we will bring with us in the further work from the GAC side in the ICG and also in the CCWG contributions.

The GAC has actually finalized the discussion on the CWG draft proposal -- the proposal yesterday. We have a conclusion and our response. It is decided to send a direct response to the CWG co-chairs. This is not advised to the board as such, it is a response to the co-chairs of the CWG.

So I think the latest status I heard from our chair is that this -- we aim to send out this around lunchtime maybe today already. And, of course, we will have, I think, a note of this also in the communique. But the message will go out in a letter from our chair today.

I think we can already say that we have taken note of the CWG stewardship final proposal and that the GAC states support for its submission to the ICG. So we are joining the process. We are contributing to the process going further.

And we, of course, have to also respect and -- and point to the individual delegation comments that have been given in the public comment period. We also underline the dependencies between the CWG and the CCWG, and that we will engage fully in the CCWG work further to look after these dependencies. But overall, the GAC is giving a positive message to the CWG about the further process and the contribution to the ICG.

Thank you.

CHAIR SCHNEIDER: Thank you, Norway.

Brazil.

BRAZIL:

Thank you, Mr. Chair. And I'd like to start by thanking the board for meeting us, and also Norway for the report, and to say that we fully adhere to what I said to -- by Norway, we intend to remain engaged and to contribute constructively to the outcome of the process.

However, I should highlight that this year, we -- it's a very important milestone for all of us. This is the ten-year anniversary of the WSIS outcomes. Also, we celebrating -- not celebrating, but it's been one year and a half since NETmundial, which although did not lead to a negotiated outcome, it's outcomes represent kind of broad consensus on the community of how to proceed.

So in that light, I'd like to take the opportunity to say there's some principles and vision emerging from those processes. From WSIS, the notion that Internet governance is multistakeholder and stakeholders have -- different stakeholders with different roles and responsibilities. And NETmundial, we have in the road map section of the outcome document some very important provisions and recommendations regarding the transition process.

In that light, we are very happy to see that some of those recommendations emanated from NETmundial are being fully accomplished in the process. The process is inclusive. The process seeks to retain the bottom-up approach and aims at maintaining the

Internet as it is today, open, transparent. And so we fully agree with that.

But in other portions of the NETmundial outcome, I think the process still lacks some more strength. And I recall that the NETmundial outcome document called for the process that would lead to net -- to ICANN becoming a truly international and global organization, independent, with verifiable accountability mechanisms. We are heading in that regard, I think. And that the political aspects would also be addressed and balanced with the operational aspects.

So in that regard, we think the process does not address adequately the vision that was conveyed by NETmundial. Our assessment is that the solution we are aiming at will not have this characteristic of assisting ICANN to become a truly international and global organization, since we have been working since the beginning in a kind of a straitjacket, which is the present situation, the present legal status that is linked to the fact that ICANN is a corporation established under the California legislation. This is not being correctly addressed.

Our vision -- and I want to be very clear about that -- is that this should not be replaced by an intergovernmental agreement. We are fully convinced this is not the case. But this new, let's say, pact should emerge from the multistakeholder voluntarily agreeing on which rules should guide the organization. And that discussion did not take place, unfortunately. As I said, we have been working that kind of straitjacket, and the -- the new system we are headed, the new model will be also governed by these rules.

We see even the experts' advice that some very interesting options and models, they have to be dismissed because they say, no, this does not conform to the existing rules, procedures, the existing way of doing things.

So, basically, what I want to say, we are committed to the process. We want to be part of the decision for the transition to take place. But we think the process should not stop here, that it should go forward, seeking to make that vision a reality. This should be done, of course, in a very careful way, because we do not want to seem that any decision to move forward, to in a way try to fret and the criteria we have agreed to be guided by. So by agreeing to move forward and to have further discussion on those aspects, we are not in any way going back on any of the commitments we are making and the criteria and the parameters that (indiscernible) that should be there as something fixed. But, nonetheless, for the transition itself, our main concern is that the role of government as part of the multistakeholder community will be acknowledged, to the sense that governments will retain their ability to send inputs for the decision-making process in a way that would address the roles and responsibilities of governments with regard to public policy. And we are concerned that some discussions sometimes tend to try to limit the ability of governments to at least interject advice into the process. We think that's the vision that to -- this year we are commemorating ten years of the WSIS, clearly states that each stakeholder should, within its responsibility, have the full capacity to influence the process. So we would certainly

not be happy if any conclusion, even at that first stage, would in a way limit our ability to influence.

And (indiscernible) that limit is -- today, governments have a limited role, because governments do not sit at the decision-making table.

And finally, in regards to NETmundial, we are confident that this will be seen in a positive light by ICANN. ICANN has been part of -- partnering with us and other members of the community to take the NETmundial outcomes to another level, to seek to implement it. And this has been part of the vision that we conveyed at NETmundial, we are convinced the ICANN board will embrace this and make sure that up on this first phase of the transition, that we are not closing the door for very important discussions that were signaled at NETmundial and in our assessment still remains to be fulfilled, it has not been correctly addressed in the present phase of the process.

Thank you.

CHAIR SCHNEIDER:

Thank you, Brazil.

Comments or questions from the board or from GAC members?

If that is not the case, then we'll move on to the other part of this process, which is ICANN accountability. Iran, please start.

IRAN: Thank you. Thanks. His Excellency, the ambassador, he raised very persistent, very important point, very valid point. We all have been attending NETmundial, and we know the positive outcome of that and the purpose of actions taken.

Nevertheless, I think these very important points need to be pursued in the CCWG, which now started the second round reflections.

So perhaps all of us, the government, need to be encouraged or perhaps urged to actively participate in the CCWG and raise these very important points raised by ambassador in that meeting, in that group, in order to be taken into account.

So I think that is a good point, and we support that, but at the same time we encourage GAC members to follow up actions there.

Thank you.

CHAIR SCHNEIDER: Thank you, Iran. Comments? Questions?

Indonesia, and China.

INDONESIA: Thank you, Chair. I just want to press the importance of the one mentioned by our friend from Brazil, because you mention about the importance of the involvement of a government and not to limit the possible intervention of the government in the Internet activities, at least in our countries.

Now based on that, I think also -- I would like also to recall the importance of the next GAC meeting in 2016 in Morocco, Marrakech, ICANN 55. Yes, ICANN 55 in Morocco, because there will be high-level meeting, as was invited yesterday by our friend from Morocco. So I would like to again say that in that high-level meeting, all these problems should be finalized and, hopefully all the leaders can declare that we will go forward for one world, one Internet, one independent, one international multistakeholders organizations to run the Internet.

Thank you.

CHAIR SCHNEIDER: Thank you, Indonesia.

Next I have China.

CHINA: Thank you, Chair, and good morning. And in order to make my question clearly, I want to use Chinese. Thank you.

When it comes to accountability, I would very much like to share our views with you. Just like the representative from Brazil, we think accountability is a core issue of ICANN operation. It's also a core issue for IANA transition.

IANA transition is to come up with a reasonable accountability system for IANA's function. That's why previously in our discussion we talk about the report the CWG going to deliver to ICG, but it doesn't mean that we approve CWG because in there, one of the thing they have to

do is to approve ICANN's accountability. However, this part of work is not done yet.

In opening ceremony, Fadi talk about the specific working plans in regard to IANA's transition, stewardship transition. So we hope we can now focus on the accountability going forward.

In terms of GAC, we should continue to move forward and continue to make adjustment. So in the Internet public policy, GAC can fulfill its role. This is also comparable to what we talk about yesterday, and similar to the opinions of many representatives from many countries.

We cannot make the conclusion right now to say the GAC will forever just be advisory body, so now we want to ask two questions. The legal jurisdiction pertaining to IANA transition. Right now, they have made some improvement in CWG projects; however, if we do not make any change, then ICANN have to make its decisions based on the U.S. law, and you might go against the benefits of other countries. So we have to resolve the legal jurisdiction of ICANN.

Many countries in this meeting have talked about the importance of legal jurisdiction, and they also point out the unreasonable aspect of this jurisdiction. So for as far as China is concerned, even if we cannot resolve this issue quickly, we still hope that we can put ICANN's legal jurisdiction on the official agenda. I think it should become an important subject of CCWG.

And another thing is accountability and transparency is going to affect the information the world receive about IANA transition.

We know accountability and transparency are very important. In order for the world to know better about the IANA transition, we need to rely on the transparency of the root zone operation. We need to be responsible to all the communities and receive the monitoring of all stakeholders. This is the only way to maintain the stability and security of international Internet.

When it comes to the confidence of the international Internet as well as the governments, whether the transition will be smooth is very important. So now we would like to listen or hear from the board members of ICANN regarding what I have just mentioned.

CHAIR SCHNEIDER:

Thank you, China. We are already quite late, so let's give a quick word to the Board, and then I have Russia and Japan. So let's all be brief because time is basically over, but this is important, so thank you.

STEVE CROCKER:

Well, thank you very much. The focus on the -- let me take a -- Sorry. You want to say something?

BRUCE TONKIN:

Just a very quick comment on the legal jurisdiction. I think one of the things that the GNSO and the gTLDs are working on as much as possible is to come up with processes that aren't relying or dependent on the U.S. legal jurisdiction. And to use one example that's been in place for some time, that would be the dispute resolution process that

we use for trademark disputes with respect to domain names. So that dispute resolution process is available for anyone in the world to use.

And then if the parties are unsatisfied with that dispute process, then they can take that trademark dispute to the local jurisdiction.

And I think a lot of what we've been doing with our new gTLD process is similar; that very rarely do we rely on a legal process in the U.S. jurisdiction. Most of the processes we are developing are arbitration and dispute processes that are not tied to any particular jurisdiction. And then if there is an escalation, it should escalate to the jurisdiction of where either the registrant or the domain name is located or the registry is located or the registrar is located. It's not tied to where ICANN is located.

FADI CHEHADE:

If I may add to what my colleague Bruce Tonkin said, all the new gTLD contracts no longer state that the jurisdiction to settle disputes is California. That's been removed.

So it's very important to appreciate that we have been working to globalize the way we settle things, and it's working quite well.

Having said that, in response to the concern about our full globalization, which Brazil mentioned, I think it's important to confirm that we are aligned that ICANN needs to globalize in every possible aspect of its work. We are completely aligned on that. But as many of you have seen these processes, there is a journey. It's not an event that makes us global. Globalization in even corporations starts with a

geographic presence, but then it moves to globalizing processes and systems. And then from there it moves to globalizing the way we think, which actually is a bit more difficult to do. That's the DNA of the organization starting to become global, and this is a journey.

Part of that journey is the end of the U.S. stewardship, which we've been working on, but it is not the end of the journey. There is a journey, and we will start on it, we work on it. We count on your assistance and help in shaping that journey as we go. We need the GAC and we need government to continue advising us, as you have been, very effectively, in fact, so that we can get through this.

And I was very worried that Norway will not say that there are positive results by noon, but she did, thank you, because otherwise we would have had two and a half hours of torture, which I think is illegal in most jurisdictions. But thank you for telling us that you have come to some conclusions. We look forward to hearing about them. And we encourage the GAC to continue to be very engaged with the CCWG Accountability process.

ICANN is committed to improve its accountability and transparency. I think the last 16 years show that we have done many things to improve that. This is a journey as well, and we can improve, for sure, in many areas. So please guide us through that process.

Now, here's the "but" part. But let's make sure that nothing coming through these processes destabilizes the delicate balance that we have built together today for the last 16 years.

What we have built here is remarkable. Our ability to work with you, to get your advice, to work with other parts of the community and advance the work on a global level is unprecedented. So let's make sure that what we have is not completely thrown out. It is improved. It is taken to the next level. No question. But this delicate balance is important. And nowhere in this delicate balance should we change the role of governments. We should -- It's been strong, it's been active, it's been effective in helping ICANN be a better organization. We need that role to stay where it is as it's been very effective.

This is important, because as you said, China, it's the security and stability of the system that should be at the heart of everything we do. So we cannot change the balance of the system so much that the security and stability of the system becomes critical. And let's not forget this is one of the key criteria of NTIA for the transition: security and stability.

CHAIR SCHNEIDER: Thank you. Erika, do you want to very, very quickly say something?

ERIKA MANN: I know you are under immense time pressure so I will keep it very short, but comment from the Chinese representative from the GAC, I think it's rightly pointing out that this is a critical moment in time so the transition and the accountability process offers an interesting opportunity to review what we call internationalization. And I think Bruce is right as well. We sometimes tend to forget in this Internet

world the relations between international law and between local and global -- and national laws.

So I'm much more confident that we will find a solution if we keep this always in mind, that in many ways we already apply national laws in the registrars and registries, and it's embedded in our contract.

So I think if we keep this in mind, probably our concern will be less relevant.

CHAIR SCHNEIDER: Thank you.

Russia, please.

RUSSIA: Thank you. I will speak in Russian.

I would like to endorse the opinion of other governments that say that it's very important to have a certain alignment between the two processes of preparation of this transition, IANA transition process, and the proposal of accountability because these two process are aligned.

We also have some doubts and hesitation regarding certain details of this proposal.

We are aware that this process is limited in time, and it's very difficult within this time limit to create a certain proposal that will satisfy

everyone. We also respect NTIA requirements and are aware that this proposal will be aligned with this proposal and these requirements.

Anyway, we know that although that these doubts will not be removed, we will hope that these problems will be in certain way detailed and implemented.

I would like to list these problems. First the role of governments in the area of decision-making, and here we totally agree with Brazil that this level of decision-making and the role of governments cannot be lower than it is today at this level.

Russia has stated many times that the role of governments in the decision-making process in public policy should be increased, but at this level we can't agree that (indiscernible) role can be influenced, affected.

Secondly, the jurisdiction. We totally endorse other governments that say the question of jurisdiction should be further considered. And it's great that ICANN has listened to us and the Board as well, and it's great that this opinion is shared and will be considered in the future.

Thirdly is the immunity regarding sanctions, because if we say that one and the same company declares a certain public interest as the best -- as the main intent, the same company participates in the application of sanctions regarding Internet users. This can't exist. There should be always some possibilities for ICANN to further introduce immunity against sanctions.

And fourth, it's very important for us, and we should not overlook this, is the role and status of operators.

Thank you.

CHAIR SCHNEIDER: Thank you, Russia.

Japan.

JAPAN: Thank you, Chair. And thank you, board member, to come here.

Just I have a simple question regarding the proposal to give empowerment for -- to the communities by CCWG. We like ask you how the Board look at this proposal? Although we understand the ICANN Board has (indiscernible) role for ICANN's management and operation at certain level with accountability and transparency. Otherwise, we ask you what lack of both function role were for both so far, and how the Board improve them? Is empowerment for communities only way or not? So I would be grateful if you can (indiscernible) some thinking.

Thank you.

CHAIR SCHNEIDER: Maybe a very short answer from the Board to that question.

STEVE CROCKER:

I'm not sure I completely got the sense of it.

I'll endeavor to give a response. I'm not sure I got the complete sense and I apologize if I miss some of it.

As Fadi has mentioned more than once, we view the accountability as something that needs to be improved continuously. It's a journey not a single destination.

Our general approach is that maximum amount of transparency, a refinement incrementally of what the rules are.

We're faced over and over again with situations that do not have ultra clean, well-documented and well-worked-out answers. And so as a community, entire community, not just the Board, not just the staff, we find our way through these and we take the lessons from the hard cases, and we refine those, and we try to improve the -- what those lines are. And on that basis, we improve our accountability. We try to keep our transparency high in every case.

And I'm not sure whether or not that gets at all of the issues that you had in mind, but that's at least a part of the answer.

CHAIR SCHNEIDER:

Okay. I think we'll need to stop and just quickly go to the last item very briefly.

France.

FRANCE:

Thank you. I would like to say that France shares many of the views expressed by other nations, especially Brazil and Russia.

Now I'm going to speak on France's behalf and also some countries, including Argentina, Gabon, Spain, and Brazil. I will refer to the CEO, and my comments will be addressed to Steve Crocker and George Sadowsky.

I would like to say that despite some significant flaws, you have enabled us to have an exceptional CEO in Fadi's person. He has been a great contribution to ICANN. And let me highlight some of his qualities and virtues.

Please take these into account when you start searching for a new (indiscernible).

Let me mention four of these qualities. First I would like to say that Fadi showed that it was very important that although he came from a business background, he could understand that part of the job also had a political and a diplomatic dimension. This is extremely important because you need to convince capitals.

The second quality related to the first one is the fact that Fadi embodies multiculturalism and this is extremely important. This is not only related to an image that he projects. It has to do with the fact that people can understand him and he can understand the people.

I don't know if you will be able to find a Lebanese Egyptian who speaks French and also belongs to the Californian society, but we would like to repeat these kind of characteristics.

Then Fadi also showed that he could do an excellent job as a CEO without coming from within ICANN, without being an insider. I believe that perhaps this was an advantage.

And the fourth quality is that Fadi announced that he's going to leave ICANN, but that should also be considered as a reference to show that there is life outside ICANN and that a good CEO does not necessarily need to spend his all -- all his entire life in this position.

I would like to extend my appreciation, and I could spend two hours talking about him.

[Applause]

CHAIR SCHNEIDER:this item --

UNKNOWN SPEAKER: Now I would like to take the next two hours to talk about Fadi's default, if I might.

[Laughter]

STEVE CROCKER: If I might. We actually have streamlined the search process. We've instructed the search firm to limit the search to only those who are Lebanese Egyptians living in California, speaking french. There are 17 and we're interviewing them next week.

[Laughter]

We will have an answer very shortly.

CHAIR SCHNEIDER: How many brothers and sisters do you have, Fadi?

Okay. Thank you very much, and please apologize for running over time, but sometimes this is important. So thank you very much for these engaged discussions, at least in the second part of this meeting.

Thank you.

[Applause]

We'll restart at 9:00. Okay? At 9:00 sharp.

[Brief break]

CHAIR SCHNEIDER:

Please sit down. We will continue.

Thank you. Please take your seats.

Just that we are all on the same track, we will not discuss, as it was originally in our agenda, the CWG anymore, because the letter that you have received will go out this morning. So that is it.

With regard to the CWG, I propose that we will continue on our discussion that we started yesterday, based on these questions and trying to get some answers, for your information, we -- we originally planned there was a coffee break at 10:30. We'll see what we do with that. But what is for sure is that the co-chairs of the CCWG will come at 11:00, together with the legal experts and will be at our disposal to update us on developments that have happened since last Friday. And we can ask questions to them, and we will continue. So the whole rest of the morning will be devoted to our working contribution on the CCWG work.

So yesterday, we had a good exchange, with some answers already on the first question.

So I propose that we would move to the second question on -- which, for the time being, reads -- yes, Iran.

IRAN:

Thank you, Thomas. Before you move to the second question, we have spent some time yesterday to decide on the issues that we have to raise with the board.

There were two issues about accountability, transition. We agreed to move them to the last part. However, you addressed one of them and you did not address the other, and you jumped to the last one.

Perhaps, (indiscernible) you need, further to the personal discussion that I had with you -- I do not repeat it publicly -- you need to closely follow the agenda. It was unfortunate and disappointing that what we have agreed yesterday was not followed. I don't need any explanation. You talked to me and I talked to you personally. I hope that we need always to look for improvement.

Thank you.

CHAIR SCHNEIDER:

Thank you, Iran.

I think this must be a misunderstanding. I clearly mentioned after we terminated the discussion on the IANA stewardship transition led by Norway that we will move on to the next item, and I gave you the floor. You took the floor. You were rather short in -- by mainly saying that you would like to encourage people to participate in the CCWG work, as this was very important, and you terminated, and then other people took the floor.

If you have a different perception, please go and check the minutes or the transcript, at least, of this meeting. But I did give you the floor, introducing this agenda item, and you took the floor. And then other people took the floor.

Thank you.

IRAN:

For -- Thomas, no problem. I don't want to take the time of the meeting. But let's be (indiscernible), and let's follow the agenda correctly.

Thank you.

CHAIR SCHNEIDER:

Thank you. This is what I did.

So let's go back to the questions that we are having on the screen, as, again, this shouldn't be going -- getting a drafting exercise on the precise formulation of the questions. We should, however, maybe amend the questions so that we are in sync of what we would need to discuss or want to discuss. So I propose that I'm going to read out the next question, and then we check whether this captures what we want to discuss.

So the question that I proposed was, does the GAC want to participate in the community empowerment mechanism as an organization, with voting seats or does it want to have an advisory role as of today with respect to the ICANN board?

So this is mainly targeted as trying to get views from the GAC members on the role that governments and the GAC should have in the ICANN system in the future.

Yes, Iran.

IRAN:

Thank you, Chairman.

Perhaps you need to revise the questions. Participating in the voting for the empowerment of community has nothing to do with the status of GAC, whether remain advisory or not advisory. You can be -- remain advisory but still have power to vote on the empowerment. We are not talking of the vote in the board of ICANN. Currently, we don't have that power.

So perhaps you need to revise the question. Does GAC wish, first, to be a member of any of these membership arrangement? This is the first question.

And second, does GAC wish to have a power to voting of any of the empowerment area?

So we mixed up the issue of voting on the ICANN board being advisory or not. It has nothing to do with advisory or not advisory. In the bylaw, the six power we mentioned and every of seven SO and AC have the possibility to participate in the voting procedures. Has nothing to do with their status. So perhaps we should properly read what is going on in the CCWG.

And I request you to reconsider your question in order that we be able to properly consider how to answer that. We don't need to answer it now, but the question should be properly mentioned.

Thank you.

CHAIR SCHNEIDER:

Thank you, Iran. I think this helps us clarifying the situation or the question.

So let's try and recap what you are just proposing.

So the first element, does the GAC want to participate in a membership structure based, whatever, community empowerment mechanism, is that the first? So the issue of membership should somehow appear in the first line. Is that -- in the first part of the question.

And then the second one, if I get you right, is the question of whether or not the GAC wants to have voting rights or what -- maybe you can again clarify the second part so that we get this right.

IRAN:

Let me make it clear. We have not yet discussed the new arrangement in CCWG. But what I heard from the people around the table, that they want to put in the bylaw that every of the seven SO, supporting organizations, and AC, advisory committee, would have the opportunity to vote on any of the empowerment, irrespective of their status, whether or not they have a director with voting rights or not. That is -- they said that the right is there in the bylaw. Whether we want to exercise that right, you could raise the question. But that does not require any answer now. Because if the right is included in the

bylaw, according to the discussion on CCWG, we can exercise that right at any time. Sometimes we may not want to exercise that right, sometimes we may exercise. For question A, we says, yes, we want to exercise the right. For question B, which is not interest of GAC, we don't exercise. So perhaps that is just a general question, but not a question that we require any reply now.

The way that is drafted is this. But it has not been discussed yet. And we have to make it very clear.

The issue is the empowerment of the community. It is different from the issue of the status of standing, which requires that you have the right to take the issue to the higher level and escalation which requires the membership. And that you raised in the first question. Do we want to be a member or not, some of the SO and AC currently say informally that they don't want to be a member. So your question is right, does GAC want to be a member or not in any membership arrangements. That is a valid question.

Second question is just general. For the time being, we do not need to answer because we don't know what is the situation. Yet do we have to discuss it this afternoon and tomorrow.

Thank you.

CHAIR SCHNEIDER:

Thank you. So let us look on the screen and see whether what is written there more or less captures this.

So it's about the proposed six community powers. And the question would be in which ones the GAC would want to participate.

The Netherlands want to say something. Thank you.

NETHERLANDS:

Thank you, Chair.

Rather than rephrasing questions and being reactive on proposals which are shifting and changing, I would rather give -- I would like the GAC to give a response, let's say in the near -- CCWG working group, and also in Dublin, which is a little bit in line with, I think, Brazil, which mentioned this morning, that means that whatever mechanism will be put in place, I think the principle should be that the GAC should be -- have the capacity and be able to give advice on public policy.

So rather than reactive, being reactive to whatever mechanism, we should have the principle stated somewhere, that we -- it's not a question of are we going to be limited, are we going to be having more powers. No, the question is not that. The question is that whatever mechanism is there, we should have the right to exercise our powers, and it's not only, I think -- and there the bylaws are very important. If the bylaws restrict us to only give advice to the board, then there should be a change, of course, because there will be a shift of powers.

Thank you.

CHAIR SCHNEIDER: Thank you. Before giving the floor to Switzerland, Iran, and Brazil, I think this is what the third element of the question is trying to capture about continuation of the advisory role, where people would then have to make it clear that this is in regard to any -- whatever the future structure will be, what would be -- in case we want to continue to exercise an advisory role, how should that be done. This is more or less what you are aiming at.

Let me give the floor to Switzerland, then Iran, then Brazil.

Thank you.

SWITZERLAND: Thank you, Chair.

I think that before, a little bit in line with what Netherlands just said, before going to answer specific questions on the actual shape of the proposed -- of the proposal being discussed in the CCWG, we have to give an answer, put ourselves the question, what is our role in the new framework or in the new structures or in the new processes, in the new balance of the community? What is the role we want to have? And, therefore, I think we need a first general question where we put on paper how the different GAC members see their future role as GAC in the new framework. And we cannot just answer questions put by others or react to proposals put forward by others, but we have ourselves -- to ask ourselves what is our intended role or our preferred role in the new framework.

Thank you.

CHAIR SCHNEIDER: Thank you very much for these clear statements.

Tom is already trying to type something that would capture this. Would you agree that this is the basic question, Iran?

IRAN: Thank you, Chairman. The process quite simple. You just shift question 3 immediately after question 1. So first you talk about how the public-policy issue will be dealt in CCWG. And second question, does GAC want to continue to have its advisory role as of today with the ICANN board. That is (indiscernible).

So you don't need to have a new question. Your question is there. Just shift it as the second question. Because it's continuation of the first question. How the public policy will be dealt with. And second, does GAC want to continue to have an advisory capacity as today. That means we don't want any change. We don't want change to the core value of 11. We don't want to change principle 47. We don't want to change the stress test.

So your question is already there. And it's quite simple to take that and answer.

Thank you.

And then you go to the third question, is more general.

CHAIR SCHNEIDER: Thank you.

Brazil.

BRAZIL: Thank you, Thomas.

Well, our approach to this is that governments, as one of the stakeholders, should fully participate in each and every decision-making process. In regard to the ICANN board, I think this is -- is not taking place. And I don't think it is realistic to think it will take place to the extent that we are not touching on the fundamental legal nature of ICANN.

For my delegation, for my country, I think -- and I assume that would be the same for others -- it would be unfeasible to have a government representative sitting on a board of a private company established under the California legislation. That's why we have been insisting and even running the risk of being misunderstood, that we think the ultimate objective of what we are doing, not now in this transition, but in the future, would be to turn ICANN into a truly international organization, governed by rules agreed by all stakeholders, all stakeholders, including governments. I think that would give us comfort to participate in any body that would be established under ICANN. At the present stage, I think, for government -- well, I speak for my government. I don't think it would be realistic to have the Brazil government appointing a representative to sit at the board in the present circumstances.

So in regard to retaining the advisory role, does GAC want to have -- I would very simply say, yes, we want to -- I don't see an alternative not to retain the advisory role. To have a voting role, I don't see that happening. But at least we want that role not to be diminished. I think this is something we should fight for, not to have -- to accept mechanism that would put any limits or any -- on our capacity to do it.

And in regard to any empowerment mechanism for the community, I'm not sure if (indiscernible) those would be consistent with our particular circumstances, governments. But, in principle, I would say, yes, if there is any -- that would depend on the legal nature of these bodies.

So I think maybe from our side, I would say, in principle, yes, we would be interested in participating. But we'll have to look at the legal constraints that might prevent us as governments to participate.

But looking at us as one of the interested stakeholders with a particular responsibility to feed into the process advice on public policy options, I wouldn't see why we should limit ourselves to the possibility if the possibility will be acceptable for us, according to our government, let's say, proceedings.

Thank you.

CHAIR SCHNEIDER: Thank you. I have Spain next.

SPAIN:

Thank you.

In respect to the question, does the GAC want to participate in a membership-based community empowerment mechanism, I could make this -- the following reflection. Is it possible that the community empowerment mechanisms are used against GAC advice or GAC advice influence on decisions taken by the board?

If we want to preserve the advisory role of the GAC, we also have to think on the new scenario, which is different from the one we are in, the new setup. Maybe communities will be empowered and we'll have different instruments to defy ICANN board decisions. It may well be that those decisions are based on GAC advice.

So maybe we should not yet restate that we want to remain as an advisory role, but also, we may want to protect, preserve this advisory capacity.

Maybe we could suggest that the advisory role of the GAC is (indiscernible) as fundamental bylaw, that it's difficult to change, as well as other provisions in the bylaws. Or maybe we can think of reasons or instances in which the community could not exert their powers against government decision -- board decisions based on government advice.

I think we should all think about this when we look at the new proposal and the role that governments should play in the new settlement.

Thank you.

CHAIR SCHNEIDER: Thank you. I have Portugal.

PORTUGAL: Thank you. And I'm going to speak in Portuguese.

With respect to this issue, I think that what we are discussing here is something related to cosmetics, because this is a cosmetics exercise. In fact, we are not going deeper. Unfortunately, once again, we are losing the chance. I think that these exercises are not dealing with the core issue, because is it reasonable for governments to operate in a private company? Or does it have any sense for any country? I don't know. Perhaps it may be so for some countries, but not for Portugal.

So I hope -- you should not understand that Portugal is saying that the governments should be more or less in this new environment, in this new structure. But Portugal is saying that ICANN should be moving towards an international organization, where all these stakeholders should have the same role to play, but each of them will have a different power. Governments should be interested in public policies and defending public policies. So our answer, our reply in this regard is that this is a cosmetic exercise and we are not discussing the true value, the core value. The ICANN accountability will still be the same. And so what can I say in this respect?

The GAC should not lose the status it currently has. This is the minimal level we should reach.

With respect to the mechanism or what type of mechanism will be used, I don't know, really. This is not the substance of the issue. I think we should go deeper. And I don't know whether we will discuss it right now, or in two years. Perhaps in five years we might be able to discuss it. But right now I think their position is that the GAC, at least, should not lose the state that it currently has.

Thank you very much.

CHAIR SCHNEIDER: Thank you, Portugal.

France and then Iran.

FRANCE: I would like to suggest a few remarks in order to organize again the comments.

In order to discuss the role of GAC within the new international framework of ICANN, it is the role that we had discussed yesterday. There is no way that we will reduce GAC's influence in ICANN following the stress tests and core value 11.

The second question, does the GAC want to continue to have an advisory role with respect to the ICANN Board as we have been doing until today? This is a consequence of the first question.

Then the GAC should look into the following issue. From the point of view of implementation of the CCWG proposal, does the GAC want to

exercise the powers that are suggested in that proposal? As Brazil said, I don't know why we cannot address this question.

And the last question relates to the legal instruments proposed by the CCWG to implement all these principles. At present, in the current proposal, we will need some confirmation with the CCWG to see if we can exercise the community powers. Then GAC will have to have a legal status as a member of the organization.

So this will take us back to that situation where we had -- where we were with the unincorporated associations. So the states would be in position to group themselves into an intergovernmental organization that would have its own legal status under California law, and this poses some problem.

So we will have to look carefully at the CCWG proposal to see if they can suggest some alternative measures.

CHAIR SCHNEIDER:

Thank you, France. I'll give the floor to Iran now.

IRAN:

Chairman, perhaps we should consider the way Spain commented. Spain very rightly connected question 3 to question 2. Question 2 is, does GAC want to have an advisory role as it is today? That means we don't agree with the core value 11 changes and we don't agree with the stress test 18 as of today, what it is today.

Now, this role of GAC will be in the bylaw. Suppose that another community or few other community, S.O. and A.C., want to change this bylaw that GAC advice have this status. We should have the possibility to be involved in that process. That is why the right of the GAC to be involved in any empowerment is come on the stage. If we don't have that power, people, they go and change the bylaw relating to the status of GAC as advisory role. In order to react, we should have the empowerment to participate in that voting. Has nothing to do with membership at all. We remain advisory committee. We remain nonmember of ICANN, but we be in a position to participate in empowerment. One of them is change of bylaw, whether it is fundamental bylaw or transition bylaw. And I hope that this advisory will go to the fundamental law, and if they want to change, they have to change it with a higher threshold.

In that modification, GAC should have the possibility to participate. So we should not deprive ourselves not to participate that. So that is important.

Which one of the six empowerment area we want to participate, that is something that we have to discuss. At least we have to mention in connection with question 2, yes, we would like to be empowered to participate in the voting with respect at least to area that concerns GAC as appropriate, so on, so forth, but maybe not all. But these two are linked together.

Once again to our distinguished French colleague, this is nothing to do with the membership. One single membership is sufficient to have a

standing to taking the issue to the court. But that is something else we will discuss. For the time being, we are not talking about that. We are talking about empowerment to participate in the voting if they want to change at least one of the area, which is bylaw, relating to the role of advisory of GAC. So, yes, we want to participate on that.

Thank you.

CHAIR SCHNEIDER:

Thank you. I have one more request for the floor, and then we should make -- two, we should make a short coffee break because at 11:00 we will have the co-chairs of the CCWG of.

So I have Switzerland and the African Union Commission, and then we need to stop for the time being.

Thank you.

SWITZERLAND:

Thank you, Chair.

Just to elaborate a little bit also on what the delegate from Iran has just said. There is, in fact, this distinction between participating in the community empowerment mechanisms and the legal status you need to enforce those rights. So those are, in fact, separate issues.

I would like to add another consideration. As we ourselves are putting the questions we think are relevant to the GAC and its members, we shouldn't, perhaps, take for granted that the only way of participating

in those community powers is to have the voting rights the CCWG is proposing.

So perhaps the question could be also added an element of how we want to participate in those empowerment -- in those empowerment mechanisms or in those community powers. Because perhaps that participation doesn't need to be on a voting basis. We can have another kind of participation.

Thank you.

CHAIR SCHNEIDER:

Thank you. This is actually what the distinction between the third and the fourth question is trying to get at.

African Union Commission.

AFRICAN UNION COMMISSION: Thank you very much, Chair.

Regarding the question on the role of the GAC and whether the GAC should remain as an advisory committee, we believe it should remain - it should maintain its advisory role within the new proposed mechanisms.

Regarding stress test 18, and we have shared this with the CCWG and other colleagues, we actually consider it necessary and appropriate and support the proposed amendment to the bylaw. In fact, we think the proposal does not interfere with the GAC's working methods.

Instead, in fact, it strengthens and protects the GAC's consensus decision, making -- while improving accountability.

And if you look at what we have currently, the board does respond to and provide explanations to GAC advice, and the GAC operating principles also provides for the full range of views to be presented in case where there is not full consensus. And for that, therefore, should not trigger bylaw provision. So we support that proposal as well.

Thank you.

CHAIR SCHNEIDER:

Thank you.

I think I see some other questions, but I think we've discussed -- we know the positions on this, so we really have to stop now. There has been already some exchange on stress test 18, and you will be able to give your responses to the question.

So the aim -- and I think these questions are not that bad because they triggered quite a good discussion, actually. So let's stop here for the time being and resume at 11:00.

What we did not touch upon is the last thing. We'll somehow find a way to get that -- at least also start the debate on the last point. Maybe, Tom, if you can quickly scroll down to the last one which is the question about the IRPs. But I think we need to have the coffee break now and, yeah, see what we get out of the co-chairs and the legal team at 11:00.

Thank you very much.

[Coffee break]

GAC session with CCWG

CHAIR SCHNEIDER:

Welcome back. Please take your seats.

Thank you for coming back. We have the pleasure of having the co-chairs of the CCWG with us, including, as well, if I'm right, also the legal experts that work with them are in the room.

I maybe start with giving an update to our co-chairs about where the GAC is.

First of all, with regard to the CWG, the GAC has reached agreement on an answer to the CWG which will be communicated, if it hasn't already, will be communicated soon, as lunch today. That will basically say that the GAC agrees to send the CWG proposal to the ICG with the reference to the relation and the conditions -- conditionality to the work of the CCWG. And in addition to that, the GAC has had already an intense discussion on many, but not all, aspects of the relevant issues or questions regarding the current work of the CCWG.

The one point that we haven't so far had the time to address in a little bit more detail is the question of the IRP mechanisms. We will somehow need to find the time to exchange in the GAC on this. We have quite -- had some exchange on possible role of the GAC and the role of the GAC in the new community empowerment structure with regard to the community powers and to what extent the GAC should participate in this, under what modalities, and so on and so forth. So that discussion has been very lively, but of course it is not terminated. So this is just to update you where we are.

Maybe it would be helpful knowing that you've had quite a lot of intense sessions on the CCWG side, starting from Friday, that you could give us an update on the developments that are going on in the CCWG since basically the paper that you sent out for public comments so that we are updated and at the latest level of the discussion in the CCWG.

So, thank you.

LEON SANCHEZ:

Good morning.

We have a presentation.

All right. Let me begin by thanking GAC members for receiving us, for meeting with us. We have had very fruitful contributions from the members that have represented this committee within the CCWG. That is why we are so thankful to you, and we hope that your participation continues to be as constructive.

As you well know, the IANA stewardship transition is a process that was convened initially by the NTIA.

So could we have the next slide, please.

We are part of a process which starts with the NTIA announcement last year about its intention to take a next step in order to transfer the stewardship functions for IANA, ICANN should be a convener in this process. So the ICG established as well as the CWG that would take care of the domain names proposal for the IANA transition stewardship. And also the CRISP team was set up to look at the numbers proposal and the IANA plan from the protocol community.

All these proposals had been already sent to the ICG, and we expect the names proposal to be sent soon to the ICG so that the ICG can combine the three proposals.

The NTIA established a certain criteria and requirements to increase and enhance accountability within ICANN. That is why the CCWG was set up. Thomas Rickert, Mathieu Weill and myself are the co-chairs.

So I would like to show you how we organized our work within the CCWG Accountability group.

We have been tasked with drafting of a proposal to enhance the accountability and transparency mechanisms. So our group received this mission, and basically we have to put forward a proposal for the enhancement of transparency and accountability within ICANN so we split our work into two lines: workstream 1 that has to do with those measures and mechanisms that have to be in place or committed, at

least, by the time the transition takes place; and, on the other hand, workstream 2 focusing on more longer term commitments. And obviously here we can have more time to implement these mechanisms, and they are not directly related to the moment when the transition takes place.

So now we are working on this proposal for the measures and mechanisms that have to be in place or at least firmly committed before the transition takes place.

Later on we will continue our activities within the group to look at the requirements for the second workstream.

Next slide, please.

The way we work is the following. We have 146 people, approximately. We have 26 who are members with this geographic distribution that you can see here on this screen. We have members from all the regions, and we also have representation within the stakeholders' groups and the constituencies. So we not only have geographic representation.

And we have had 94 calls and meetings as of today, including two face-to-face meetings in Frankfurt and in Istanbul, in addition to the meeting in Singapore and the sessions that we are having here in Buenos Aires. We are planning to have another face-to-face meeting next month in Paris. We have had more than 5,500 volunteer hours in putting together this proposal. And of course we have had significant traffic through our mailing lists.

You can see that all these volunteers have worked hard in order to put together a proposal to address the requirements for the first workstream.

Now I would like to give the floor to my co-chair Thomas Rickert for him to explain to you the main aspects of the new proposal.

Thank you.

Thomas.

THOMAS RICKERT:

Thank you very much, Leon. And I'd like to echo Leon in thanking the GAC for having us and giving us the opportunity to explain the current status of our work.

Next slide, please.

You will remember, and I'm going to keep this very brief, that we came to the conclusion that we can build all the required accountability mechanisms out of these four building blocks which resemble a state with division of powers, checks and balances. So we are using the analogy of a state where you have the people or the legislative, which would be the empowered community. You would have an executive, which would be the ICANN Board, you would have the constitution, which would be the principles, core mission and values in the ICANN bylaws, and we would have a judiciary, which would be the independent review mechanism. And the way that those four would interact can be seen on the next slide.

So the empowered community -- and we will discuss this in a moment; next slide, please -- according to our current thinking, would constitute of the current SOs and ACs and ICANN structure. And these SOs and ACs would have voting rights.

In our draft proposal, we had foreseen that all groups, all SOs and ACs, except for the SSAC and RSSAC, would have five votes. And due to the special role and nature of SSAC and RSSAC, we thought that two votes would be adequate for them to have. And this empowered community, as we call it, would be able to exercise certain rights.

Next slide, please. Or maybe you can do two or three slides.

It would have the power to review and veto ICANN's budget, the strategic plan, the operating plan, and also have a say on ICANN's bylaws. But what is important to remember, and you do know this already, that we are establishing two sets of bylaws. Normal bylaws where the community, after a consultation process with the Board, can veto the decision made by the ICANN Board after the fact, after a decision has been made on a bylaw change to ensure that for these normal bylaw changes, the community has a control function to ensure that actually the bylaw changes are in line with the deliberations and the communication, the engagement that has happened before the ICANN Board took a decision. That is not to be confused with changes to be made to fundamental bylaws. Fundamental bylaws are those bylaws that have been deemed by our a group to be so essential to ICANN's operations, but also to it as an organization, that these need to be more robust, yet not cast in

concrete. That would be, for example, the mission, core values, and the commitments of ICANN.

We do acknowledge that ICANN should not mission creep into other areas. At the same time, ICANN is working in a rapidly changing environment, and, therefore, we need to retain some flexibility for ICANN to change even the fundamental parts of the bylaws. But this should only happen if the community comes together and meets a very high voting threshold to make such changes.

Also, the empowered community will have the opportunity to remove individual directors as well as recall the entire board in cases where the board chooses to ignore the community's wishes or violate the principles set out in ICANN's bylaws. But that should, and this should be very clear, a matter of last resort.

Next slide, please.

Next slide, please.

So we've identified normal bylaws versus fundamental bylaws, and we can move on to the next slide, please.

Finally, we are working on enhancing and improving independent appeals mechanisms, so that would be reconsideration and the IRP. And it is important to note that ICANN already has an independent review process, but that is deemed insufficient by some. So we are thinking of making that mechanism better to serve the community; i.e., aggrieved parties would expect not only decisions on procedural aspects but also on the merits of the case.

There have been cases where the IRP decided the decision was wrong, but due process was followed, and we think that this is unacceptable in a future ICANN.

Also, the IRP shall be more accessible, it shall have reasonable cost to it, and we're considering to have a seven-member standing panel out of which one or three panelists would be picked to make decisions on an individual case.

Now, we've put this out for public comment, and the good news is that we got very broad support for the community powers and for this basic setup of a division of powers. We got broad support for our revisions to reconsideration and the independent review process. Yet there are details to be refined and to be further worked on, but the good news is that this can remain as it is.

There are basically three open areas that we need to discuss, one of which is diversity. So there has been a request by many that we should make diversity an integral part of our work, not only in terms of aspiration but in terms of operationalization of diversity. Second is openness and flexibility of the system. So we need to design the system in a fashion that allows us to change and adapt if ICANN or its community changes. For example, the SSAC and ASAC have signaled to us that they do not wish to engage in a voting scheme, but, rather, maintain their advisory role. But this system will allow for us to adopt and change their status if there should be such need in future.

And finally, we have been asked to look more into our reference model; i.e., the follow that serves as a legal vehicle to empower the

community to exercise certain powers, and a lot has happened since last Friday and today since we have analyzed the public comments. And with that, I'd like to hand over to my co-chair Mathieu. He will show you through the analysis of the public comments and the consequences resulting thereof for our further deliberations.

MATHIEU WEILL:

Thank you, Thomas. I will speak in French.

As it was described, my friend and co-chair Thomas, and I apologize on my French. I'm making a mixture of languages here.

One important point for us, and I think that for the whole of the community, is that this week we have been working on the coordination of the CWG IANA transition group. And here we have the six conditions that have been prepared by the names group. This a part of the criteria to approve this proposal before being submitted to the ICG.

The six conditional criteria, first one -- we have in our initial report all of them, and then based on the contributions that we have received from the community after the public comment period, the whole set of this point might be reached because no objection has been raised regarding the prerequisites of the names groups. So there has been certain conditions, but we are fully confident on the capacity of achieving and meeting all this within a timeline that will help the ICG and the IANA stewardship transition process as a whole.

What have been the other inputs that we have received from the community? I will not mention again the four fundamental pillars that are the basic powers and supplementary powers because they have been supported by most of the comments received. The principle of the fundamental laws was also supported as well as to better define the core values, the missions, and objectives of ICANN.

However, within these elements, there are certain topics that should be further discussed. We would touch upon some of them, but it is good to define that we have protection regarding what might effect ICANN's remit. The integration of regular review over the ICANN's -- ICANN review process so that ICANN may be accountable and transparent, as well as some other aspects regarding the relationship between the ICANN and the U.S. government.

There are some other issues that we have to detail a bit further, that have to be refined. The independent review process meets the most important values or principles, and then there are some issues that should be further discussed because we may receive contributions and inputs from the community.

Thomas explained basically how we have adjusted our opinion about the membership model and how to secure an issue or that the powers may be exercised.

Governments should make the contribution to diversity with the ICANN. It's not an objective, per se, but we have to think about diversity within ICANN.

The accountability of the ICANN board and the -- to the community itself appear after the public comment period. We have to discuss the standards of behavior and management of all of ICANN's mechanisms. We will have to keep on working on that during this week. We will discuss these issues. And some of the governments have pointed out some aspects of this issue that should be highlighted. These are issues that are well-known in public organization, in government organizations for a while.

And if we move to the next slide -- that is the last one -- we would like to say that from 60 contributions, eight have been received from the governments. They are listed here in alphabetical order. And I really want to warmly thank them all, because they have certainly got engaged into a cross-community work. This is a substantial contribution. This means that we received lots of substance in their comments, and the participants and members and representatives of the governments are essential for our group.

We are thinking about governance and transition. These issues are of interest for GAC, but also for the capital cities that are closely following this process.

So now I think that we should focus ourself in -- on the next stages. And we will answer all your questions.

Thomas Schneider, thank you.

Thank you very much to the co-chairs. Thank you for your presentation. We have a lot to be discussed in a short time. So let's open the floor for questions and comments.

I ask the GAC members that they may use part of this session regarding the IRP, because this topic has not been discussed among us, and we should -- we should pose a question so as to ask this question to the GAC members to be ready for the Paris meeting.

I don't know whether there are some other issues, some other questions that arises -- that may arise after this presentation. And we should then identify a bit better what has been discussed this week.

I can see that Brazil is asking for the floor.

BRAZIL:

-- co-chairs of the group, and to acknowledge the tremendous amount of work and the quality of work that has been invested in which we are taking part. And we want to actively contribute to its success.

My comments will not refer exactly to the presentation that was made. We understand there are a few possibilities that are still being explored. There are some alternatives in regard to the mechanism model, which is of participation. And as we have been discussing in GAC on how we can provide input. And maybe other colleagues will comment on that.

But the point I'd like to make -- and this does not refer to the -- exactly to the work you have been doing -- is that we consider that the

accountability exercise that has been proposed and developing is taking place in a very restricted format in which there is no real liberty to explore options available. Actually, we think that some very interesting ideas were dismissed because they do not conform to the present legal structure, the present -- the existing rules and procedures. And even when we look at the comments provided by the legal experts, it becomes clear that the context in which we are operating is predetermined.

And now our assessment, it is okay to do it at this stage. We are working under the pressure of time. But we would really like to see in your final report that you could also maybe indicate that there are some issues that have not been adequately addressed related to jurisdiction, governance, and issues that have raised and should merit to be further explored.

We would like to see this transition phase not to be exhausted, to be considered exhaustive, but to lead to another phase. And as I have indicated before -- and I apologize for colleagues who have listened to me before -- to do it in a way that is not threatening to the agreed criteria and parameters we are all working under and we fully agree. But -- so we are talking about preserving the security, the stability, the bottom-up approach. We are not looking to a model of governance that would be intergovernmental-led. So it's nothing -- But, rather, we are thinking about a model that would reflect voluntarily agreed rules that would govern ICANN as such and not be working in a predetermined and fixed status to which we have to adjust ourselves.

And this vision, as I have indicated before, was conveyed by NETmundial, which called in its road map document to ICANN that this process would lead to ICANN becoming a truly international, global, independent organization, truly responsive to the needs of our stakeholders.

So by reaffirming our commitment to the process and to -- congratulating for the work, and we affirm our confidence in the successful end of this first phase, we would really like to make sure that the process does not stop here, that we will continue to explore things without the straitjacket we have been working in.

I -- I have just used a figure of language which, of course, is not appropriate. But we -- in a way, we have an open door to go out, and we are, in a way, limiting ourself to stay inside, not looking to alternatives. We are maybe putting a picture on the wall and putting some lipstick and try to -- but we are not touching on fundamentals of -- I think we should be doing it as a community. And we -- my government is part of the community, we see ourselves as part. We would like to contribute and to come to this model that would reflect that.

Thank you.

CHAIR SCHNEIDER:

Thank you, Brazil. I have Canada and France.

CANADA: Thank you very much, Mr. Chairman, and thank you to the co-chairs of the CCWG for being with us today.

We've had several discussions within the GAC this week where stress test 18 and core value 11 have come up. And I just wondered if perhaps the co-chairs could explain the intent or the thought process behind these in order to further inform our discussions within the GAC.

Thank you.

CHAIR SCHNEIDER: Maybe we give you an opportunity to react to these two statements and then continue. After that, I have France, Spain, and Iran.

THOMAS RICKERT: Thank you, Chair. And I would like to respond to Brazil and I'd like to initiate my remarks by thanking Brazil for outstanding contributions during our work. So that has been very, very helpful.

In fact, I guess we are about to make very fundamental changes to ICANN. There are many who think that we might even go beyond what they think helpful. So I think we are really starting at the very beginning.

The methodology that we have applied was such that we first established the status quo of ICANN's accountability mechanism. We then reviewed public comment that has been received last year after

the announcement has been made by the U.S. government. And then we have added results of our own deliberations to come up with a list of requirements that our group felt necessary as to substantially enhance ICANN's accountability. And that led us to certain models for implementation.

And I think that our group has not without thought abandoned certain models. But since we are working on a consensus-based work approach, we have discussed with the groups the various options there are. We've done that again last Friday, where individuals in our group were invited to present their ideal vision of how ICANN should work in legal terms, et cetera. We listened to all that. We weighed the option. And then it became clear that there was a solution that would satisfy most criteria and that would get most traction in the group. So this is an iterative process.

And yet I do certainly concur with you that we need to provide more rationale on decisions that have been made by the group not to pursue certain options that have been on the table.

With respect to your comment on inclusiveness or having an inward discussion without looking at all the options that we could have, certainly we can and we need to work harder on being fully inclusive at the global level. We need to make sure that we get more comments from the global community to take that into the equation as we move forward towards a consensus.

We have tried a couple of measures to reach out. We have -- and I think this is more or less unprecedented in ICANN's history. We have

not only issued a report and held webinars, but we've also prepared graphics, some of which you've seen today, to help illustrate and understand, for those that are not familiar with reading lengthy reports and legal language, to better understand what we're doing and to help them to comment. But we've also published the report in all U.N. languages in order to really reach out. But we would certainly appreciate feedback from the GAC as to how we can do better in order to be more inclusive.

Let me conclude by saying that the jurisdiction question is on our table. We have spent a lot of time discussing it. Yet we're cognizant of the limited window of opportunity in terms of time and the need for us to focus on the essentially required changes in what we call workstream 1. But the jurisdiction question is and will be further deliberated. And I should say that it is multilayered. So it's not only a question of where headquarters is located. It is a question of what the governing law for ICANN's contracts with its contracting parties is. It is a question of what law should govern disputes against ICANN, but also from ICANN, when it sanctions its contracted parties. And we're looking at all that. And our group has preliminarily concluded that as we move on, we should conduct an analysis whether, if at all, there are aspects where the current jurisdiction shows shortcomings compared to other jurisdictions in order to accomplish the accountability requirements that we're seeing.

Also, we are working on the alternative dispute resolution mechanisms, which we've briefly alluded to, in order to limit the probability of parties actually using courts. So we want to mitigate the

risk of a certain jurisdiction having to chime in, but make this a self-sustainable model, more or less where we have all the required checks and balances, so that nobody needs to escalate to a level where courts need to be involved.

For the next question, responding to Canada, I'd like to hand over to Mathieu.

MATHIEU WEILL:

I will speak in French.

Stress test number 19 -- 18, sorry, is a stress test on which we have discussed at length.

Let me remind you that we looked at the change of procedure rules by the GAC. And this would lead us to a decision-making process based on a majority.

Some of the interested parties seem to be under the impression that this would significantly reinforce the influence of governments on ICANN. So there was some concern about the fact that that would comply with the criteria established by the NTIA for the transition process. This is the source of that stress test.

Our group has been open to collecting all the information and also all the extreme cases and to avoid judging over probabilities, recognizing the concerns of all parties, because we are here dealing with concerns. So all these concerns have been considered. There was much going back and forth with the GAC, because we maintained exchanges with

different emails or letters over these issues. And I think that we need to highlight how we have evolved. We consider evolution aspects in this stress test.

So the first proposal was amended after some exchanges between the governments and the CCWG.

So all these parties expressed their views. So the first proposal, this proposal, the current proposal, needs to be compatible with the current practice, and it should not limit the GAC in its potential future evolutions of its modalities of work. Therefore, the proposal that has been put forward shows that the ICANN board, when receiving GAC advice, should engage in certain procedures that would be of a mandatory nature once the GAC advice has been achieved through consensus. We do not establish that. That is done on a voluntary basis.

The whole group of stakeholders in our group decided not to establish any specific requirements in that regard. So that is important. This is the state of progress on this issue. We know it is a sensitive issue, especially at the government level. But there are also some other stakeholders that have raised their expectations and concerns about the stress test. And I believe that exchanges should continue to make sure that everybody understood well what point we are at at this moment.

From this point of view on the communication from GAC or from (indiscernible) to all GAC members on this issue will be (indiscernible) for us.

Thank you so much, Mathieu.

CHAIR SCHNEIDER: Thank you, Mathieu.

BRAZIL: -- question in regard to what has just been said. I am asking this because I am not too familiar with this.

Is there any other stakeholder that is also being judged by that kind of standard? Because just very briefly, in the case of NETmundial, we organized together with the community. We found it to be good for each stakeholder coming to organize themselves and to be able to provide the best advice they could.

And one was not interfering with the other. Because I think part of the multistakeholder exercise is to respect the culture of each stakeholder to organize themselves and provide input.

I think in the case of governments, there are mechanisms governments use to assess the -- the advice or their inputs for processes, and not in each and every case by consensus. So it seems rather strange that we are being judged -- I'd like to see if other stakeholders are subject to the same kind of stress test.

Thank you.

MATHIEU WEILL: Effectively, for the GNSO and for making decisions on policy issues regarding generic domain names, there are rules in the bylaws that determine the minimal level of consensus that needs to be reached. So there is some precedent in ICANN on this issue.

This is the answer that I can give you right now.

CHAIR SCHNEIDER: Thank you.

Next, I have Spain, and then Iran.

Thank you.

SPAIN: Thank you. Thank you very much for coming to brief us on -- exchange views with us.

I would like to tackle the point of appeal mechanisms in this instance.

First of all, let me assert that I think that the existence of appeal mechanisms is necessary in an organization that aims to be accountable. In every state, we have three powers. And one of them is the (indiscernible) power, which aims to control what the executive power does. So it's very important to have this appeal -- these appeal mechanisms in place, no matter that policies are made bottom-up, and there should be communities remembered. In any case, if there are aggrieved parties, they should have the opportunity to challenge decisions made.

And these appeal mechanisms are even more important for minorities, for groups that are represented within ICANN but whose voice may not be heard as loud as the voice of others in ICANN, and nevertheless, they may have legitimate interest, should be considered. And so they should have the opportunity to defy decisions.

But even -- it is even more important for groups and stakeholders that are not represented within ICANN and that may be affected by decisions made by ICANN. In this respect, we commend the working group for having been sensitive to these needs and lowered the barriers of entry to these appeal mechanisms. We observe, we notice that there are provisions to make them more affordable, although we'd like them to be extended, if possible. We've also noticed that the standard of review has been expanded to include substance, not only process. And this is key. But we noticed as well that for a person to use these appeal mechanisms, it needs to be materially affected or have suffered damage already to go in front of the IRP panel. And we do think that there may be instances in which the harm has not been done yet. And that should not prevent that party from using these mechanisms.

I would like to say also that we still have some doubts on whether all efforts have been made to guarantee full independence of the panel. The panels are going to be paid by ICANN. I wonder whether it could be possible to pay the organization from which they are recruited instead of paying the salaries of the panels. I think that that could be a good -- could improve the independence of the panelists.

And on the diversity point, it's true -- it's not a requirement, but an aspiration. I feel very close to this issue. And we have stated in our comments that the use of English as a working language in the procedures may limit the number of panelists that can be recruited to be in the IRP panel. I don't know, maybe you contradict me and say that it's not going to be a barrier for someone who is a lawyer, who is a specialist in a matter, and who comes from a country with a different legal tradition but who doesn't speak perfect legal English. So I would like the working group to consider this, maybe building on the experiences of other organizations that also have arbitration panels.

And final comment on the response given to Brazil, I think. That if I understood correctly, you are trying to avoid as much as possible going to courts. Well, from -- maybe from minority group in a distant country, they will be safer if they go to their own courts, because they have to have the procedures in their own language, in a legal environment they more or less feel comfortable. So I don't think that the goal should be to avoid courts. The possibility of going to court should always be there. But what we don't -- we want this to have an internal appeal mechanism or appeal mechanism with sufficient guarantees of independence, affordable, and effective as well.

Thank you.

CHAIR SCHNEIDER:

Thank you, Spain.

I think we should note the issues that have been raised by Spain. And I would also incite you maybe in the last part of this discussion to particularly focus on the IRP. We'll also have to look at the question that we can then send out to GAC members to give their views on this. So I don't know whether we -- you want to keep these -- maybe there will be more questions coming in on the IRP.

I have so far on the list Iran, France, Switzerland, and Morocco.

I'd -- Indonesia. And then I'd like to, after these interventions, I'd like to move on and focus on the IRP, because that is something that we as a GAC haven't discussed.

So please be short. The next one is Iran.

IRAN:

Thank you, Chairman. Unfortunately, it's difficult to be short, because there are major questions. If you want to be short, it's better not to talk. I don't think we rush. We are discussing basic principles. So we have to be clear. So there's no short -- and not short. Thirty seconds, 20 seconds. So let's just continue instead of discussing.

Distinguished Chairs, thank you very much for coming and explaining to us.

We understand that in order to empower the community to exercise some or all of their empowerment area, there is a need to have some sort of membership. Is there any minimum for that membership?

I give an example. We have seven SO and AC. Is it possible that having only one single SO or AC be member and the other SO and AC could benefit from that one single membership and exercise their power? Question mark.

Question two, if there is no membership at all, what is the situation? Suppose that all of them decide not to be a member. They don't need to reply now. They reply later. So one situation.

Third, suppose that like SSAC and RSSAC, some members decide not to exercise their vote. You said that you will consider that. Is it necessary to consider it now? Or you put into the bylaw their right to vote and it's up to them to exercise it or not. Why we want to have a different alternative proposal? You put all SO and all AC could have the right to vote on certain things, and is up to them to use that right or not to use that right. That is another question that needs to be replied.

Then if somebody don't want to vote at all, is there any alternative way? Some people are talking of expressing an opinion. Does opinion have any legal status, instead of voting, you just express opinion. How it works legally?

And another question. You said that you want to reply the court to the extent possible with the dispute resolution. They are two different areas. You could not do that.

Suppose that ICANN board decides on something. Disputed by community. Go to IRP. IRP consider that binding. ICANN disagree with that, go to the court.

You have said that instead of going to the court, go to dispute resolution. So what is the status of dispute resolution? The result is binding or not binding? Consequently, there are many, many questions yet to be answered.

In our view, it is our view, that we should not complicate the situations and having so many complex procedures which would be difficult to be applied. In particular, for some countries, they do not have necessary machinery or necessary support legally, financially, and so on and so forth, if their cases are on the stake. So we should take most simplest approach if possible and not go to that level.

Thank you.

CHAIR SCHNEIDER:

Thank you, Iran.

Let's give the floor to our co-chairs to try to give a simple answer to all these questions. Thank you. Please be short.

THOMAS RICKERT:

Okay. First of all, with respect to the points raised by Spain, these are well noted. Excellent ideas. We will take those into account when we further deliberate.

With respect to the questions from Iran, let me also stress that the representative of Iran has been extremely helpful in our deliberations and his commitment.

I hope I have noted all questions correctly, but what would happen if only one organization chooses to obtain formal membership status? According to our thinking -- this is work in progress, and I can't emphasize this enough. We have more meetings during this week and later on to further refine the niceties of this refined model. But even if only one organization chooses to take the formal steps to enter into a relationship with ICANN, we will still make sure that the bylaw language gives the same weight of votes to those that do not wish to take this formal step.

To avoid a situation, to give an example, let's say the GNSO, that's the organization that I'm coming from, chooses to take this formal step, then there must be no situation where only the GNSO has the right to cast votes.

So those organizations that choose to vote will have the same weight and impact of their votes. Yet we want to make this approach as lightweight and as less invasive as possible. So for the time being, all organizations with choose not to do anything, not to take any formal steps with respect to their status and their relationship with ICANN.

They will vote, should they choose to vote, and that will be taken into consideration when it comes to defining the voting threshold and whether there is traction for certain motions that have been put on the table.

And should the Board honor the decisions made by this group of SOs and ACs, then there is no further step required. It would all be entirely voluntary basis -- based and we would not need to take any further steps.

Only in case an organization wishes to take a more formal step, then we would have these enforceable rights. But we think chances are high that the Board will honor decisions that are being made by this group.

So it will be a drafting exercise whether or not the status of all organizations has to be enshrined in the bylaws or whether we mirror the current status of responses that we got in the bylaws and yet keep the model open for future changes as I've mentioned earlier.

So it is well possible that since the GAC and RSSAC -- since the SSAC and RSSAC, due to their special nature and limited nature, want to abstain from the voting rights, do not want to exercise voting rights, and that that will be reflected in the bylaws. Yet the system could be open to future changes.

Arbitration should be binding. That's a principle, and certainly we need to ensure that there can't be a back and forth be, as you explained, between Board decisions and the IRP. So we need to further consider the niceties, but the basic principle is that IRP decisions need to be binding and that, therefore, the chance to go to court are diminished.

But let me be perfectly clear, with the community powers that we have put in our proposal, the escalation paths towards a decision by this community group shall be a last resort. There will be prescribed consultation and engagement mechanisms before the Board takes a decision. And by doing so, we do hope that we can maintain a culture where ICANN Board decisions are consensus driven and that we would only use voting mechanisms in that is required because the Board wishes to ignore the community's wishes.

MATHIEU WEILL:

To change a bit, I'll speak in English.

One point I would like to add to what Thomas said, which I think can never be emphasized enough, although the principles of the system will be set in the bylaws very soon, hopefully, in a few months' time, we will ensure this remains flexible. And I will give examples.

Example number one is the Root Server System Advisory Committee. We met with them yesterday, and they're clearly saying right now we are an advisory committee. We are appointed by the ICANN Board. We have a narrow focus and mission and so we don't want to participate in this voting mechanism. That is the current status. But they're also saying at the same time, in the future we may want to organize ourselves as a community, and maybe in five, ten, 15 years time they will become a supporting organization of ICANN. That would be conceivable, considering their important role in the security and stability of the DNS.

Because of that, what we have confidence in is that if it ever comes into play, it's going to go through changes of bylaws of ICANN and so on, but our system will adjust to that, and they will be able to participate to this voting mechanism.

So there is flexibility to also maybe accommodate some day an Internet of things supporting organization, if it ever comes to be a reality. And that's -- so there is flexibility still. It's not closed on, when we finish our report, exactly who has which voting rights and everything. There is going to be some flexibility embedded into the system for that, and safeguards as well, which are ones we are providing for the bylaw changes or the fundamental bylaw changes for the key provisions in the bylaws.

So I think it's important to stress that it's not going to be the final call, it's not going to freeze ICANN structure forever. And so we have an important responsibility but we still have abilities to adjust after that.

CHAIR SCHNEIDER:

Thank you.

I have five more requests for the floor for the time being.

We have about 20 minutes left. My plan would actually have been to spend at least the last 15 minutes on concentrating on the IRP, because otherwise we may not have the time to discuss this at all in the GAC because we will start drafting the communique in the afternoon. So my question to you is how should we proceed. Should we try and get those of you who want to speak not on the IRP first and

take them all together, maybe give one more response opportunity to the Board and then gather everything that is linked to the IRP, maybe take a little bit for time than 12:30? Is that something that -- because we somehow need to structure the discussion in order to get everything out of it that we should.

So I have France, Switzerland, Morocco, Indonesia, and Egypt.

So I suggest we end the list here for the non-IRP related discussion, and you make your points very quick. We give the board one response, and then we focus only on the IRP after that, if this is okay for you.

I don't see any objection, so let's try and see whether this works.

France, please.

FRANCE:

Thank you very much, Mr. President.

Of course the voice of France joins you in your congratulations. We agree with Brazil regarding the legal framework. We have to stress that in the presentation to the CCWG. We hope, as many others, that the issue of resorting to the course will be discussed later so as not to lose everything that has been said so far.

I'd like to mention four points. The first one, the community empowerment. We know that CCWG went back to the initial proposal and so in this respect, if any state is demanding to have a legal standing in foreign law, this will be something completely new.

Now let's go to a new proposal of the CCWG. I hope this will not put governments on an equal footing, an equal status. We would have to analyze from the legal perspective all these implications.

The second point is related to the risk of capturing the institutional framework of ICANN. We think that the CCWG initial model was threatened to be captured, to be hijacked by a group of individuals, so the stakeholders may consider everything included in the NETmundial declaration. We know that this is discussed seriously within the ICANN.

This also is related to the adoption of a major policy regarding the new ICANN and the ICANN Board and the IRP and all these topics.

I would like to mention briefly the appeal mechanisms, the two most important principles that guided your reflection, because we know that the IRP decisions are mandatory, and this is related not only to ICANN's policies but the agreeing of ICANN's -- ICANN's Board's decisions with the bylaws.

We don't have problems with the way the CCWG is tackling the implementation of all of this. We have been working hard with our colleagues that considered implications of resorting to international arbitration and we know that this is a legitimate concern. So that for the next meeting of CCWG, you will discuss this in Paris.

I want to add a comment in this respect. We would like to highlight the objective of the ICANN's enhanced accountability process is not to

put ICANN in the position of resorting to international courts. Two things can be mixed up over there.

And the last point regarding the stress test 18 and core value 11, we have mentioned it in our public comment. We think that the amendments to the bylaws show a tendency to voluntarily challenge the responsibility of governments regarding public policy. We have taken note of the fact that this is not a view shared by all members of GAC. Some GAC members do not agree with the proposals -- with the proposal of amendment. We insist that we want to label this in a status quo, but what will happen if the GAC cannot accept the CCWG proposal in Dublin? What will we do?

CHAIR SCHNEIDER:

Thank you very much, France. We're going to journal this with other questions.

Switzerland next.

SWITZERLAND:

Thank you very much for the presentation to the co-chairs of the CCWG. As a participant to that group and, obviously, as a GAC member, I would like to stress the fact or to remind ourselves, as Thomas Rickert said that, we are here before fundamental changes in the structures.

Second point is that the dust is just settling now and that we are just now having a clearer picture of what those new structures or what that new framework might be.

And third point is we have been listening to some of the leaders of this community setting 2016 as a deadline for this process. So we have to be mindful of that time frame, too.

And fourth, I think we are witnessing today very interesting and substantive discussions within the GAC. And has been explained to you, I guess, there will be inputs to the CCWG for the Paris meeting. So I would just like to stress the fact that probably it's possible that you receive hopefully creative inputs from GAC members on the -- on the possible ways the GAC may fit into the new structures.

So perhaps it's a way of requesting to keep the mind open, because perhaps it's not just a yes-or-no answer to what you are proposing, what we are seeing now, now that the dust has settled. But perhaps you will receive more creative inputs. And I think it will be useful that everybody keeps an open mind. Thank you.

CHAIR SCHNEIDER: Thank you, Switzerland.

Morocco.

MOROCCO: Thank you, Mr. Chairman.

First of all, I would like to join my colleagues in expressing my appreciation for the considerable efforts made by the CCWG on accountability. In our opinion, this effort should be sustained and enhanced.

I have a comment, a thought, and a question. Let me begin with my question.

Our delegation views this process as virtuous, dynamic, in order to reach a more inclusive, more transparent, a more accountable model that will reinforce the credibility and legitimacy of ICANN.

We are really ambitious, and we have to be realistic. We need to take into account everyone's concerns, and we consider this process as one stage within a long process as the ICANN chairman said it this morning. This is a process that needs to be reinforced and enriched in the future.

So now let me share with you a thought. And I believe that the slide on the screen makes me reflect on the number of countries that have made contributions or reacted to the work of the working group.

There are eight countries out of the of 152 GAC members and observers. So this is less than 5% or 5% of the countries. So this should make us reflect within the GAC on how we can talk about an inclusive model if we do not endeavor to include the communities and also represent the interests of the developing countries, the African countries, trying to do a better job at raising awareness and bringing them closer.

Then regarding the relationships and the dependencies between the work of the CWG and the CCWG, I would like to know what are the dependencies in that regard.

INDONESIA:

Sorry; I don't recognize your Indonesian words in France.

Yes, Chair, I think we have heard about the discussion on how we have to put the jurisdiction of the organizations and how another approach is to use a dispute resolutions within the organizations to look after if there is a dispute between members of the Internet society, society group in the whole world.

Now, separate from that, we cannot -- I mean, every country can still enforce whatever the law they have in their countries. So dispute may also arise when some countries would like to enforce the law in their countries in the Internet system.

Now, to overcome this problem, I would just like to quote the agreement, the -- what's called it? The proposal of the U.N. Working Group on Internet Governance about the possibilities of having a convention among countries for the Internet governance. This is also reiterated on the short speech of the Indonesian minister and the GCCS, last GCCS Indian hub, where it was shown the importance of the possibilities of having a convention of this type.

With this convention, then every country have to follow and cannot enforce whatever they want even in their own countries.

If we agree for the bylaws in the organization to bind all of us, then just put it the convention and we will agree for that. With this case, there will be no complaints about whereabouts of the organizations and the jurisdiction of the organizations.

Now, it will take a bit of time, of course, but we have the GAC here. Well, I'm not saying the convention of the GAC but convention of the countries. But we're representing the countries, as many of us mentioned, so we can start to see that separate from all the process, all the CWG process, all the CCWG process, to find possible problems in the future, then in parallel with all this process we can start to think as how to avoid all the problem in the futures by having separate from all the proposals, to have the conventions for all of us. And the GAC can start this. It doesn't have to be a U.N. conventions. It is just the GAC conventions. As long as it is agreed by all countries, then here it is. We will not -- We will follow the bylaws of the organization. We'll follow the dispute resolution in the process instead of the law in the country.

And I also understand that some countries have some sort of, like, extra territorial jurisdiction in the countries where a crime carried out in other countries but get a problem -- cause a problem in their country can become a criminal under the law of that country, although it may or may not be a criminal in the law of the other country. So these kind of thing is really very complicated because there are so many countries, but once we have the conventions, we will forget all the differences in the law and we just follow the bylaws of the institutions.

Thank you.

CHAIR SCHNEIDER: Thank you very much, Indonesia.

Last I have Egypt.

EGYPT: Thank you, Chair. And thank you very much for the presentation, for the tremendous work, and for being flexible to accept new models at such a late stage.

Actually, I was triggered by the discussion by our colleague from Iran and yourselves regarding the flexibility of the model and that SOs and ACs can express interest to exercise voting powers at a later stage. And I understand this would be reflected in the bylaws. So would this be subject to the normal bylaw change cycle in terms of not getting into effect until a public comment period, and so on? So it's not something that's immediately going to take place.

And more importantly, would this be subject to a public comment period and subject to, I mean, somehow further approval by the community if an S.O. or an A.C. requests such?

Thank you.

CHAIR SCHNEIDER: Thank you.

So you have received quite a lot of input, so try and give some answers.

MATHIEU WEILL:

Very briefly, maybe starting with Egypt, yes, there would certainly be community input. Changing of the ICANN structure is a structural change, so in accordance with the principles of the -- of operating ICANN, it certainly goes through community input and actually the process we're describing from bylaw changes would apply. So there would be a lot of coordination amongst the community on such changes.

If you want, we can move that further right after that.

I would address two of the procedural issues that were raised, and I think there were many other comments that were extremely helpful for us to listening. And I know many of the group members and participants are sitting in this room and listening intently to take that on board while we move further. And I can reassure you we will try and stay as open-minded as possible in this process, because I think it's a condition for success.

So what happens if the GAC or another chartering organization does not approve the final report when it's issued in Dublin?

So technically this is a possibility that is described in the charter of the Cross-Community Working Group. And so what the charter says, quickly, is that the CCWG may, at its discretion, reconsider possible public comments and also submit to the chartering organizations a

supplemental draft proposal which take into account the concerns raised.

So we would have to consider whether we do a supplemental draft report or not. That would be decision one. And then if we move into that, whether we launch new public comments and so on.

So obviously with the timeline that we are currently considering, that would jeopardize the whole transition. That's just a fact because of the conditionality for the IANA stewardship transition on the one side from the naming community, and because it's been made clear by NTIA that it would only consider a full package, including the accountability proposal. So that's a fact, and I don't know. So there's not much of a plan B in terms of timing.

Next is the how we are going to coordinate with ICG and the other track of the IANA stewardship transition proposals. We've been working very closely with the CWG the last few months. We are getting up to speed with closer coordination with ICG now, because hopefully they are the one in charge after this meeting. And we'll keep interacting. And a formal step will be in Dublin where, certainly due to the dependencies that have been set up with our group, the CWG Stewardship will have to certify that our proposals meets their condition. And that certification will certainly be provided to all chartering organizations as part of the final proposal process.

So that's the kind of coordination we're looking at at this point.

I won't be any longer, Mr. Chair, because I think we need more time.

CHAIR SCHNEIDER:

Thank you.

So now I suggest we take ten, maybe maximum 15 more minutes to focus on comments, positions, and an exchange with you, but also among GAC members on issues on the review mechanisms. We've already heard some opinions and some elements and things that are important to at least some governments, like Spain and France.

So please comment on -- share your views or your questions on the elements of the independent review mechanisms.

The draft question that we have so far that we would then send out to you for comments until somewhere around 10 July for the time being is in what ways would the proposed improvements to the IRP be satisfactory for public policy and government's needs? For example, in terms of increasing transparency, increasing focus, et cetera. So that is the question that we're trying to use as one that would trigger your comments and your input into the CCWG.

So, please, let's try and focus on the IRP and have an exchange on this.

Maybe those who already have made comments in the public comment period may start.

African Union Commission.

AFRICAN UNION COMMISSION: Thank you, Chair. And I'd like to thank the co-chairs of the CCWG for that presentation.

I have two questions, and perhaps they've already been addressed. And these questions have also been posed, I think, by the Board generally regarding our interim relief that is being proposed.

And the question here is would permitting interim relief before any actual action is taken by the Board have serious or vast consequences on ICANN's ability to function. And in this case, I would like to use our example where in May 2014, the IRP issued a decision on interim measures of protection, instructing our countries to stop our TLD from proceeding until the final decision. So the question is in what we're proposing, shouldn't the interim relief be only available when there's very definitive and concrete and substantive controversy to that specific issue?

The other thing is the issue of openness and transparency and focusing where you have a panel that doesn't really understand how the ICANN or GAC functions. And so we probably have a tendency to veer off the main issue, focusing perhaps on more process issues rather than the issue at hand.

The other question is time frame. Should we not set a time frame for when a panel should issue its decisions? Right now we have a panel that -- we have a process where we don't know when we will ever get a decision. And we asked that question this morning to the Board, and the Board didn't have an answer either. So it could be two months, six months, six years, 20 years.

So thank you.

CHAIR SCHNEIDER: Thank you, African Union Commission.

Reactions to this or further comments. Whoever wants to take the floor, please take the opportunity.

Okay, Leon.

LEON SANCHEZ: Thank you very much to the African Commission for their comments. We will definitely take them into account in our discussions this week, and we will continue to address the different concerns raised.

CHAIR SCHNEIDER: Thank you.

Further comments or questions on the review processes?

Spain.

SPAIN: I don't want to expand on what I said before, but it could have been helpful to have the legal advisors here to answer questions related to IRP. I don't know if they're in the room.

UNKNOWN SPEAKER: They are here.

CHAIR SCHNEIDER: They are here.

UNKNOWN SPEAKER: They are here.

CHAIR SCHNEIDER: So you can actually ask a question to them.

UNKNOWN SPEAKER: I see them in room.

I would just note that it's not necessary to always -- always the safest to ask lawyers questions on the fly. So I'm just putting this caution that if it hasn't been researched yet, they might not be in a position to answer. And, obviously, we will take that for later.

But they will -- they are here and listening, I know. So if you have specific questions, please do raise it.

SPAIN: As regards the effects of IRP decisions, it's mentioned in the proposal that the decision can be enforced before U.S. courts or before any other jurisdiction in which ICANN can litigate.

Now, in one of the stress tests -- I don't remember the number exactly -- it is foreseen that in the case that the board doesn't abide by IRP

decision, the community panel can spill the board because of that decision to reject to implement an IRP decision.

So that, for me, it raises the question of what is the precise nature of the resolution adopted by the IRP? Is it an internal mechanism the community can enforce on the ICANN board through indirect ways, such as spilling the board in -- if the case may be? Or is it binding on both parties of the litigation, so that if ICANN doesn't abide by that resolution, the party prevailing in the conflict needs to go to a court in order to have it enforced on ICANN? So what is the legal nature of the resolution adopted by the IRP?

Thank you.

CHAIR SCHNEIDER:

Thank you. Who would like to respond to this?

UNKNOWN SPEAKER:

I think this is more a question with respect to the architecture of the accountability mechanisms, as such, and how they interplay. So certainly the IRP decisions, according to our current thinking, should be binding upon the board. And then the question is, what happens if the board does not follow an IRP decision?

And in that instance, there are two other community powers that can be exercised: Either remove individual directors or threaten to recall the entire board.

So we think that the risk of a need to go to court and have an IRP decision enforced on ICANN is a merely theoretical reason, because the community will step in in case the board chooses not to honor IRP decisions and threaten the board that they will be removed.

And we do think -- ICANN these days is an organization that is under enormous global scrutiny -- that it is very unlikely that board members will ignore -- in the light of public supervision, if you wish, to not follow IRP decisions. And we can then remove them.

And so we think that the likeliness -- as remote as it might be, the likeliness of the board being removed is higher than the need for an IRP decision to be enforced in court.

CHAIR SCHNEIDER: Thank you.

I have Iran.

IRAN: Thank you, Chairman.

First, I have some comments, and then I have some reflections of what our chairman or co-chairman of the CCWG replied.

First the questions. We have some concerns about the composition of the -- gesundheit -- composition of the board, of this panel. We have concerns about the numbers. We have concerns about how they have

been proposed. Currently, it's mostly in the hands of the ICANN board. I would like to have some clarification why it is so.

Now, the question raised by Spain and replied by our co-chairman, if a decision made and contested by the community and resulted to go to the IRP, and then decision is made is not automatically result in removal of the board. Because ICANN board may say that this binding decision is inconsistent with our fiduciary duties. And who would reply to that? That is court or whatever other procedures. You could not say any decision is binding, because ICANN has some fiduciary duties, and these fiduciary duties provide them that, no, this may be correct but it is against what we expect them to do. And then going to the court, I still have doubt that the dispute resolution would replace the court. And then I have difficulty to say what we heard this morning from the ICANN board, that it should go to the different jurisdictions. No doubt, it should go to the jurisdictions of California law.

So it is automatically there. And that is concern raised that people will have different type of jurisdictions. So everything will be in the hand of the jurisdiction of California.

Thank you.

MATHIEU WEILL:

If I can just offer a couple of thoughts on this.

First of all, on the initial points that you raised around the selection process, they are part of the feedback we've got from the public

comment, and certainly being taken to heart as we refine the proposal on this.

Then you highlighted an issue in the interplay between the various mechanisms. And we certainly have to ensure we properly craft this so that there's no deadlock.

One thing that is going to be extremely useful to that is that the IRP, while having binding powers, does not have the power to revisit policy. It can say, "I confirm this decision," or it can say, "I -- this decision is to be remade. It is void." And that's it.

As a consequence, the possibilities to interfere with the board's fiduciary duty are very limited, very, very limited. And I hope that this will be our -- one of the -- that will enable us to craft those mechanisms so that we don't get into the deadlock that you described, which is obviously something that needs to be avoided at all costs.

CHAIR SCHNEIDER: Thank you. I have one more request for the floor from the African Union Commission.

AFRICAN UNION COMMISSION: Yeah, I'm sorry to hold you.

One of my concerns is not only with regard to the composition of the members of the panel. It's not only the geographical distribution

about -- of the members. But one other problem is their competency, too.

In the case of .AFRICA, we have seen the panel asking some questions that are not very relevant to the process itself. And you find yourself people dragging the process and hijacking it in a manner that is not beneficial for the ICANN process at all.

So one of the issue need to take into consideration is, we need to have a panel who does understand not only the ICANN processes and mechanisms and policies, but also can contextualize everything with regard to the area which is actually being considered. This is very important.

And my other concern will be with regard to the fact that from now on, their decision could be some kind of binding the board or taking some kind of decision. Auditing is auditing, if I may say. But hijacking the system, anybody should -- they can stand up and say, "I need an IRP process," and then hijack everything, and finally we get into something that is not relevant to anybody.

Please consider that.

Thank you very much.

UNKNOWN SPEAKER:

Thank you very much, the African Union Commission again.

Yes, we are taking that into consideration. That is why this standing panel will be chosen by the community. We will look into fleshing out

the details on the requirements that those panelists must meet, of course. And we will also be looking into safeguards so this IRP cannot be just as an extortion mechanism for -- against the community and the corporation itself.

So thank you very much for your -- for your remarks.

CHAIR SCHNEIDER:

Thank you.

If there are no more requests for the floor, then I think we can stop. I have Iran, and then we try to stop the discussion, at least for now.

Thank you.

IRAN:

Yes. For the attention of our distinguished co-chair, it is not that you consider. You need to establish clear criteria how this should be invoked. But not everybody take that. It should be clear criteria to be met, then goes to this process.

Thank you.

CHAIR SCHNEIDER:

Thank you, Iran.

So I think we all need a lunch break. And with this, we thank the co-chairs and everybody else for participating in this discussion.

We will resume as the GAC at 2:00 o'clock. We will then have -- to have a quick discussion on how to move this forward, and then we will, I think, start with the drafting of the communique.

So thank you, all, for this --

[Applause]

-- good debate.

UNKNOWN SPEAKER: Thanks for having us.

CHAIR SCHNEIDER: And enjoy your lunch.

And, by the way, we hope that, in particular, one person will be able to enjoy his lunch, because it's his birthday. So happy birthday to you, Tom.

[Lunch]

[END OF TRANSCRIPTION]